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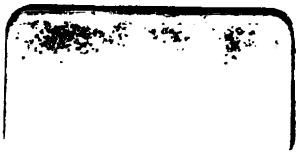

REPORTS

FROM

THE COURT OF CLAIMS,

SUBMITTED TO THE

HOUSE OF REPRESENTATIVES,

DURING

THE FIRST SESSION OF THE THIRTY-FOURTH CONGRESS.

1855-'56.

TWO VOLUMES.

VOL. 1 . . . . . 1 to 26.
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34th CONGRESS, 1st Session. } HO. OF REPRESENTATIVES. { REPORT C. C. No. 1.

SAMUEL P. TODD.

[To accompany bill H. R. C. C. No. 1.]

MARCH 6, 1856.—Reported from the Court of Claims.
MAY 16, 1856.—Ordered to be printed.

SAMUEL P. TODD vs. THE UNITED STATES.

To the House of Representatives of the United States:

The undersigned, by direction of the Court of Claims, in pursuance of law, herewith respectfully transmits the following papers in the case above mentioned:

1. Petition of Samuel P. Todd.
2. Opinion of the court.

[L. S.]

SAMUEL H. HUNTINGTON,
Chief Clerk Court of Claims.

SAMUEL P. TODD *vs.* THE UNITED STATES.

The following opinion was delivered by Chief Justice Gilchrist on Tuesday, in the case of Samuel P. Todd *vs.* The United States:

To the Court of Claims:

The petition of Samuel P. Todd, a purser in the navy of the United States, respectfully represents: That during the time he was on duty as such, he received, between the years 1812 and 1815, from Washington, a certain amount of money in treasury notes, to be used in making payments on account of the officers and others of the navy of the United States for pay accruing to them as such, and for which he has duly accounted to the government; that a portion of the same notes so received was by him negotiated and sold, by direction and under the authority of the commanding officers, at a discount, for the purpose of paying off seamen and others who had served out the time for which they had enlisted in the United States Delaware flotilla, a force employed for the defence of the river Delaware during the late war with Great Britain; that the said discount paid thereon amounts to five hundred and seventy-four dollars and fifty cents, ($574 50,) which has been regularly charged in his accounts with the government, and vouchers rendered for the same, which are now on file in the office of the Fourth Auditor of the Treasury; that he has never

been credited with the amount aforesaid, the accounting officers alleging as a reason for not putting it to his credit, as follows:

"It is true that the act of January 25, 1828, which forbids the payment of public money to any person for his compensation, who is in arrears to the United States, contains a proviso that it shall not be extended to balances arising wholly from the depreciation of treasury notes received by such person to be expended in the public service; but no authority has ever been given to the accounting officers, except by special acts in particular instances, to credit any disbursing officer with his loss upon such notes." Your petitioner would further represent that he has paid into the treasury of the United States the sum above stated, viz: five hundred and seventy-four dollars and fifty cents, ($574 50,) and respectfully asks to be relieved by such act as may authorize and direct the Fourth Auditor of the Treasury to admit the same to his credit, that it may be refunded and paid to your petitioner.

SAMUEL P. TODD
vs.
THE UNITED STATES. } *Amended petition.*

By leave of the court first had and obtained, the said Samuel P. Todd, in amendment of his petition, states that the court should award him interest on the amount which may be found due him, and which has been so long and so unjustly detained from him.

He further states that he is the sole owner of this claim, never having assigned any portion thereof.

In consideration of the premises, he prays, as in his original petition, &c.

BIRCHETT & DOWNING,
Counsel for Claimant.

OPINION.

The claimant's allegations are, that, being a purser in the navy, and serving in the United States Delaware flotilla, he received, in his official capacity, from the government, between the years 1812 and 1815, certain sums of money, to be used in paying persons employed in the naval service, in treasury notes. A part of these notes was sold by him at a discount, under the authority of his commanding officers, for the purpose of paying off seamen and others. The discount amounted to the sum of $574 50, which he has charged in his accounts, and furnished vouchers therefor, which are on file in the office of the Fourth Auditor. The reason given by the accounting officers for declining to put this sum to his credit is, that no authority has ever been given them, except by special acts in particular instances, to credit any disbursing officer with his loss upon such notes.

In answer to a call upon the Treasury Department for information relating to this claim, we have been furnished with a copy of a letter addressed to the Secretary of the Treasury, dated on the 27th day of

January, 1855, and written in answer to a letter of the Hon. R. M. T. Hunter, of the Senate, addressed to the department. The letter to which we refer was written by Mr. Dayton, the Fourth Auditor, and in it he states as follows: "Mr. Todd, during the last war with Great Britain, was purser of the Philadelphia station, and had charge of the accounts of the officers and men of the Delaware flotilla of gun-boats. In the year 1817 he rendered an account, in which he charged the sum of $574 for loss sustained by him on the sale of treasury notes, which were then at a discount in the market, and which he was compelled to exchange for smaller money to enable him to pay the men. This claim was disallowed; but upon what grounds, I have not the means of positively ascertaining. It has since been frequently renewed, however, and it would appear, from the correspondence of the office, that it was rejected from time to time, owing to the want of proper proof of the loss, and want of legal authority to make such an allowance. In the year 1839 the deficiency in the evidence was supplied as to a part of the claim, amounting to $313, by the production of the approval of the commandant of the flotilla. The receipts of brokers were produced for a portion of the remainder, showing that, in December, 1814, they had sold treasury notes for Purser Todd to the amount of $4,000, on which there was a discount of $240; but these vouchers were not approved by Commodore Rodgers, the commandant of the station. On one of the rolls, however, approved by the commodore, the following note is endorsed by the purser: 'The men whose names are herein mentioned were all paid off in Philadelphia bank notes, treasury notes having been negotiated for that purpose by direction of Commodore Rodgers.' The amount paid to the men alluded to was $2,630 31; and as the approval of Commodore Rodgers is directly under the note, and as the roll is dated on the 31st of December, 1814, during which month the notes were sold, I presume that the approval may be considered of the same force, to the extent of $2,630 31, as if it had been attached to the brokers' bills. The average discount on treasury notes during that month appears to have been 6 per cent. Purser Todd, in one of his letters to this office, complained that he was not informed of the necessity of Commodore Rodgers' approval of the vouchers until some years after the first account was rendered, and that owing to the commodore's loss of memory, it could not then be obtained. It was the duty of the memorialist, however, being a purser in the navy, to be acquainted with the rules of the department, and to present his evidence, in the first instance, in the requisite form. Upon the statement of his account in 1849, a balance of several thousand dollars was found to be due from him to the United States, including the sum of $574, now in question, the whole of which balance he paid into the treasury, by order of the Secretary of the Navy.

"I think he has proved his loss on the negotiation of treasury notes, under the circumstances mentioned in his petition, to the amount of $470, or thereabouts."

From another letter, dated on the 4th of December, 1855, written by Mr. Dayton to the Secretary of the Treasury, it appears that the sum of $574 was paid into the treasury on the 11th of November, 1839.

By this statement of the Fourth Auditor it appears that, in the first place, the claimant satisfactorily proved a loss by the depreciation of treasury notes, amounting to the sum of $313. He then showed by the bills of the brokers a depreciation of 6 per cent. upon the sum of $2,630 31, amounting to the sum of $157 82, making in the whole the sum of $470 82, which agrees with the loss as estimated at the treasury. This sum of $2,630 31 is a part of the sum of $4,000 which was sold in the month of December, 1814. The claimant alleges that he is entitled to be allowed 6 per cent. on this sum, but he is allowed 6 per cent. on the sum only of $2,630 31. The difference between the sum claimed and the sum allowed is $82 18, and in the present stage of the case it is upon this sum only that any question arises; for upon the vouchers showing a loss to this extent the approval of the commodore was not produced.

The objection is, not that the notes, amounting to $4,000, were improperly sold, but that the proof adduced does not comply with the rules of the department so far as regards the sum of $82 18.

We start, however, with the fact, that in the month of December, 1814, the average depreciation on treasury notes was six per cent. The sum of $4,000, then received from the government in treasury notes, would pay the debts of the government only to the extent of $3,760. If, then, the purser had shown that he paid the officers and men the sum of $4,000, there would be competent evidence tending to prove that the United States were indebted to him in the sum of $240, over and above the money he had received; and, in the absence of evidence to the contrary, a jury would be authorized to come to that conclusion. But it is unnecessary to rely on this view of the case; for the statement of the department is, that the receipts of brokers were produced showing that, in December, 1814, they had sold treasury notes for Purser Todd to the amount of 4,000, on which there was a discount of $240. The question now is, not whether the amount of the depreciation should have been allowed at the treasury, but whether it should now be allowed by the United States. It is entirely proper that, for the methodical conduct of business at the treasury, rules should be established which the experience of its officers informs them are best adapted for that purpose. But such rules cannot, in a suit against the United States, supersede the ordinary principles and requirements of the law of evidence, nor can they add anything to what the law requires of a claimant in order to make out his case. The treasury notes have been sold by the brokers; their accounts of such sales, duly proved, are competent evidence, and the best evidence the nature of the case admits of to prove the extent of the depreciation. It was the duty of the purser to pay off the officers and men of the flotilla so far as the funds furnished him by the government would permit. But the notes were worth less than their nominal value by 6 per cent., and to the extent of 6 per cent. on the amount the purser may be considered as having paid his own money. Before his accounts were stated, on the 11th of November, 1839, the facts in this case would be sufficient to support an action for money paid; and after that date, and after he had paid the money into the treasury, the facts would support an action for money had and received. The approval

of the commodore upon the vouchers is to be regarded only as required by a rule of convenience at the treasury, but it cannot be considered in a court of law as a rule of evidence. Cases might undoubtedly occur where, under peculiar circumstances, a wanton disregard of the rules of the department might be indicative of fraud, or of such gross negligence in the claimant as might authorize the rejection of his claim; but nothing of the kind appears here. The fact that the purser was not informed of the necessity of the commodore's approval of the vouchers until some years after 1817, when the claim was made, can scarcely be considered gross negligence. If an officer's accounts be substantially correct, he can hardly be subjected to such a charge, because he is ignorant of merely formal proof not required by an act of Congress.

We shall therefore report a bill in favor of paying to the claimant the sum of $553, for which he has produced satisfactory evidence.

It is contended, on behalf of the claimant, that the United States should be charged with, and should pay, interest on the amount of the claim. If this be so, it is either because the court should report to Congress, that, in their judgment, the claimant is fairly and equitably entitled to interest, or because they should report that the United States are legally bound to pay interest on the amount ascertained to be due, upon the principal that, in the ordinary courts of law, enables a creditor to recover interest of his debtor.

In regard to the first of these reasons, it is proper to inquire into the principle that should govern the court in their adjudications upon the cases within their jurisdiction, either as belonging to one of the classes specified in the act, or as referred to the court by one of the houses of Congress. If a claim be alleged to be "founded upon any law of Congress," in the words of the act we must construe such law, and ascertain its meaning by applying it to those rules of construction which a wide and long-continued experience has determined to be the best adapted to that purpose; and the same course must be pursued where a claim is founded "upon any regulation of an executive department." If a contract with the government of the United States be the foundation of the claim, the nature and validity of such contract must be determined by the application of known and well settled principles of law. Without such principles to guide them, no tribunal, no body of men, judicial or deliberative, can administer any other than that hasty and impulsive justice, whose decisions, as they would be uncontrolled by any rule, could never aid the citizen in ascertaining the extent and nature of his rights.

If the application of principles of law, considering the law as our rule of conduct, be necessary in the cases belonging to the classes specified in the act, it is equally so in regard to the claims referred to the court by either house of Congress. It seems sometimes to have been supposed that the language of the act on this point was comprehensive enough to authorize the court to recommend Congress to do anything it may be in their power to do—in fact, to pass any law that would not be a violation of the constitution. But our duties are not advisory. The language of the act does not authorize us to regard this tribunal as possessing any other qualities than those which pro-

perly belong to a court. A committee may recommend, but a court can only adjudge, and that whether its jurisdiction be final or not. It cannot adjudge without founding its judgments upon the law; and where it can find no law, it can render no judgment. It may, perhaps, be said that as our judgments are not final, and as we must report to Congress, our decisions can be regarded only as recommendatory in their nature. But the seventh section of the act provides that the court "shall report to Congress the cases upon which they shall have finally acted, stating in each the material facts which they find established by the evidence, with their opinion in the case, and the reasons upon which such opinion is founded." Under this provision an "opinion in the case" can mean only an opinion as to the rights of the parties upon the facts proved or admitted in the case. We do not think that Congress, by establishing this court, intended to constitute a council to advise them what course it would be honest and right, or expedient, for them to pursue in any given case. They meant, as the title of the act denotes, "to establish a court for the investigation of claims," to ascertain the facts in each case, and the legal rights and liabilities arising from those facts. It is only by acting upon some settled plan, and according to some fixed principles, that the duties of the court can be performed with any prospect of administering substantial justice. The obvious duty of the court is to expound the law as they find it established, and apply it to the cases before them, and not to create it; *jus dicere*, and not *jus dare*.

Considerations of this general character are pertinent to the subject before us, because it raises the question at once, how far we should recommend to Congress to do what we might think right and proper to be done, and how far we are bound to confine ourselves to the application of principles of law. It is always within the power of Congress to make a law for each case, within the limits of the constitution; but, in our opinion, we have no power to make a law for any case. Congress did not intend that we should legislate. In that case, we must make the law before we could pronounce a judgment when the claim did not come within any principle. If Congress think that the law, as it exists, does not render justice to a party, the remedy is in their own hands, by legislating in such a way as the demands of justice may require. It is more consistent with the constitution, which requires that the departments of the government should be kept distinct from each other, and far better and safer that the power of legislation should be exercised by Congress, than that it should be vested in any judicial tribunal. It is the peculiar duty of Congress to understand the wants of the country, and what is equitably due to the citizen, and, within constitutional limits, to legislate accordingly. But if we were to recommend any action to supply any supposed deficiency in the laws, we should not only assume a responsibility which does not belong to us, but we should interfere with the prerogative of the legislature. We shall, therefore, confine ourselves to determining how far the United States are bound by law to pay interest upon a sum ascertained to be due.

It has been supposed that, as, when a petition is presented to this court, the United States occupy the position of an ordinary defendant

in a suit at law, the claiment, when a sum is adjudged to be due to him, is entitled to recover interest from the United States, as any plaintiff would be who had established his right to recover a certain sum of a defendant. It will illustrate the question to inquire how far this right extends between private persons. Laying aside the right to recover interest founded on the obligation of a contract, a party in a suit at law is entitled to it only upon one of three grounds. The right to recover interest must depend—

1st. Upon statutory provisions.

2d. Upon the authority of adjudged cases; or,

3d. Upon some usage known to and recognised by the parties.

It is difficult to conceive of any other foundation for this right.

The first ground is sufficiently intelligible without any further comment.

As to the second ground, the authority of adjudged cases, it is somewhat remarkable that upon a subject of such frequent recurrence, and so necessary to be early settled and understood, the decisions of the courts, both American and English, should be so numerous and so discordant. An analysis of the authorities will show that it is difficult, if not impossible, to elicit from them any general rule regulating the rights and liabilities of parties upon this subject. An elaborate and able investigation of the cases is to be found in the opinions of Savage, C. J., and Sutherland, J., in the case of Reid *vs.* Rensellaer Glass Factory, 2 Cowen, 387, in the supreme court of New York, and in the opinion of Mr Senator Spencer, in the same case, in the court of errors, reported 5 Cow., 587. But it is unnecessary at present to attempt an investigation of them. In the case of Calton *vs.* Bragg, 15 East., 226, Lord Ellenborough said: "Lord Mansfield sat here for upwards of thirty years, Lord Kenyon for above thirteen years, and I have now sat here for more than nine years, (a period of fifty-two years,) and during this long course of time no case has occurred where, upon a mere simple contract of lending without an agreement for the payment of the principal at a certain time, or for interest to run immediately, or under special circumstances from whence a contract for interest was to be inferred, has interest ever been given." This statement appears to be conclusive as to the law of England at that time, and also to show that the allowance of interest by the court, as an incident to the debt, is always founded upon the agreement of the parties. Lord Chief Justice Abbott says, in Higgins *vs.* Sargent, 2 B. & C., 345, that "as a general principle, it is now established that interest is allowed by law only upon mercantile securities, or in those cases where there has been an express promise to pay interest, or where such promise is to be implied from the usage of trade, or other circumstances." Mr. Senator Spencer, in the 5 Cowen, 608, also says, that "its allowance by the courts as an incident to the debt, and invariably following it, is founded solely upon the agreement of the parties."

In England interest has been refused where property has been unjustly detained, or payment improperly refused, even in cases of fraud—Lord Ellenborough saying in the case of Crockford *vs.* Winter, 1 Camp., 129, that the fraud did not take the case out of the rule he

had previously laid down in De Haviland *vs.* Bowerbank, 1 Camp., 50; that there must be an agreement expressed or implied; and this principle was afterwards adhered to in the case of Bernales *vs.* Fuller, 2 Camp., 426. By the act of 3 and 4 W., ch. 32, 48, it was provided, that upon sums certain, payable at a certain time, or otherwise, the jury *may, if they* shall think fit, allow interest to the creditor. This act, however, leaves the matter in great uncertainty, as the jury are to exercise their discretion in each case.

Still, there are decisions the effect of which would seem to be that interest in some cases is a legal claim, irrespective of any agreement. Although it has been often stated that interest is not recoverable for money owing for goods sold and delivered, as in Blaney *vs.* Hendrick, 3 Wils., 205, and in Eddowes *vs.* Hopkins, Dougl., 376, still it is said by Lord Thurlow, in Boddam *vs.* Riley, 2 Bro. C. C., 3, that "all contracts to pay undoubtedly give a right to interest from the time when the principal ought to be paid." One reason for the discrepancy in the decisions is to be found in the neglect to discriminate between the cases where interest has been held to be an incident to the debt, and those cases where it has been held that the jury might allow it by way of damages for the detention of the debt. In Eddowes *vs.* Hopkins, Dougl., 376, Lord Mansfield held, that though, by the common-law, book debts do not of course carry interest, yet, in cases of long delay, under vexatious and oppressive circumstances, it may be allowed, if a jury, in their discretion, shall see fit to allow it. In Entwistle *vs.* Shepherd, 2 T. R., 28, which was debt upon a judgment, Buller, J., said, it was a question for the jury whether they would give interest by way of damages. In Bunn *vs.* Dabzell, 2 C. and P., 376, it was held by Lord Tenterden, that whether interest should be recovered upon an Irish judgment was a question for the jury; and if they thought the plaintiff had been diligent, and had taken proper steps to find his debtor, they might allow it. In Craven *vs.* Tickell, 1 Ves., jr., 60, the Lord Chancellor said, "from conversation I have had with the judges, interest is given either by the contract or in damages upon every debt detained." But in Gilpin *vs.* Consequa, Pet. C. C. R., 85, Washington, J., said: "It is not agreeable to legal principles to allow interest on unliquidated or contested claims in damages; and in the subsequent case of Willing *vs.* Consequa, *ibid.* 172, the same judge said: "Interest is a question generally in the discretion of a jury."

It has not been our purpose, in referring to some of the more prominent decisions on this subject, to ascertain whether any general rule can be deduced from them that shall regulate the allowance of interest in suits at law, as that is not the question before us. Our object has been simply to show that the authorities are conflicting, and that an approximation to a rule is to be found in those decisions which hold that, in the absence of a contract to pay interest, it may in some cases be allowed by the jury, upon a view of all the circumstances in the case. But even supposing that juries are vested with a discretion to allow interest or not, we do not occupy the position of a jury, although, to a certain extent, we necessarily exercise some of the functions belonging to that body. Like a jury, we are called

upon to determine questions of fact; but of that wide discretion which, according to some of the cases, juries may often exercise, we possess no portion. On this subject they derive their power, so far as it may exist, from practice sanctioned by judicial decisions. In regard to the question before us, there have been no judicial decisions and no practice. Our duty is confined to determining whether certain facts are proved by the evidence, and only in this respect are our duties like those of a jury. If we were to take Lord Mansfield's rule, that a jury, in their discretion, might allow interest "in cases of long delay, under vexatious and oppressive circumstances," and apply it to claims against the United States, the question would then be whether, in the given case, the United States have been dilatory, and had postponed the payment of the debt for an unreasonable period. This would render it necessary to inquire, to some extent, into the condition of the United States when the debt accrued and since, the situation of their foreign and domestic relations, the position of their financial affairs, the existence of financial crises, and everything that would throw any light upon the question, whether it was or was not, on the whole, unreasonable that payment of a debt should have been delayed. Such a vague and unlimited discretion we should hesitate to exercise without an authority vested in us in clear and positive terms.

In regard to the third source of the right to recover interest in suits at law, the existence of a usage known to and recognised by the parties, it is sufficient for our present purpose to say, that the usage of trade in this as well as in other cases may properly, and often does, regulate the contracts of parties. (Meech *vs.* Smith, 7 Wend., 315.) A usage may operate upon and modify the rights and duties of individuals whose dealings are comprehended within it, whether it be local merely, or the usage of a particular trade. As they are presumed to contract with reference to the usage, it thus becomes a part of their contracts.

If we attempt to apply to cases in this court, where claims are preferred against the United States, the rules which regulate the liability of parties in ordinary suits, we shall find that the liability of the United States to pay interest upon a debt cannot be traced to any of the sources from which the liability of individuals can be deduced. There are, in the first place, no acts of Congress which impose this liability upon the United States. Statutes may be found exceptionable in their character, and based upon peculiar circumstances, which induced Congress, in the exercise of their discretion, and in view of what seemed to them proper, to provide that interest in certain cases should be paid. But there is no general law enacting that interest shall be paid on debts due from the United States, nor has any general appropriation of money ever been made for the purpose of paying claims for interest.

Secondly. There are no adjudged cases which might serve to us as precedents for deciding that the United States are legally bound to pay interest. Indeed, until the institution of this court, there was no mode by which the liability of the United States, upon this point, could be made the subject of judicial investigation. But we are not

aware that there are any cases in which the question has been even incidentally discussed. There is no law enacting that interest shall not be paid, as there is no law protecting the United States from being sued; but we presume that it was never supposed such a suit would lie until the passage of the act constituting this court. We could not, then, justify ourselves for holding that the United States are liable to pay interest by appealing to the decisions of tribunals where this question has arisen and has been decided.

There is a remark made by Mr. Justice Baldwin, in pronouncing the judgment of the court in the case of the United States *vs.* Arredondo, (6 Pet., 711,) which might at first be supposed to have some bearing upon this question. He says: "The only question depending is, whether the claimant or the United States are the owners of the land in question. By consenting to be sued, and submitting the decision to judicial action, they have considered it as purely a judicial question, which we are now bound to decide as between man and man on the same subject-matter, and by the rules which Congress themselves have prescribed." We do not understand this remark as meaning anything more than that when the United States have permitted themselves to be sued they become subject to such rules and principles of law as may be applicable to them, or may have been prescribed by Congress. The case referred to was decided more than twenty years before the United States were made suable, and when it was necessary to state a rule for the decision of that particular case alone, the court not being called upon to state any general principle regulating their liabilities in all cases. We have no reason to suppose that Congress, by constituting this court, intended to provide that all the acts of Congress, and all the judicial decisions, and all the principles which regulate the dealings between man and man, were to be applied at once and without discrimination to the United States; that they might, for instance, plead the statute of limitations without any express authority, or be subject to other laws enacted before they could be made parties to suits, and whose application to them could not have been anticipated. By the institution of this court a new party defendant has been called into existence, and made to appear before it, with duties to the claimants not at present distinctly defined, and requiring the light of research and reflection to display their outlines. If Mr. Justice Baldwin could have supposed that he was stating a rule of conduct for the United States in all cases where, by subsequent legislation, they might be made defendants, the subject would undoubtedly have been examined with a degree of care commensurate with its importance.

Thirdly. The liability of the United States to pay interest cannot be founded on such a usage as enters into and forms a part of the contracts of individuals. The usage is directly and expressly the reverse. The government has not only omitted to pay interest, but for the greater part of a century it has expressly refused to pay it. The practice of the government on this subject is fully stated in a recent opinion by the present Attorney General, Mr. Cushing, under the date of September 20, 1855. It there appears that, as long ago as the year 1819, Mr. Wirt spoke of a refusal to allow interest as

"the usual practice of the Treasury Department;" and this practice has existed to the present time, unless when it has been dispensed with by some special law.

Nor can it be said that the United States are bound to pay interest on the ground that their liability is to be classed with the duties of imperfect obligation mentioned by writers on ethical jurisprudence, and that to receive interest is a right for which no remedy has been provided. It would be going very far to say that interest is due as an abstract right, founded on moral principle. It is well known to be discountenanced and forbidden in some parts of the world, and by some religions. (Lowe *vs.* Waller, Dougl., 736, 740.) It is wholly conventional in its origin, arising out of an artificial state of society, in which new rules of action grow up in proportion as social relations become more intricate, and require a nicer discrimination. As it depends upon law and usage, where they are not found it cannot be said to exist.

In the discussion of this subject we have endeavored to confine ourselves to the question, whether there is any law or any usage that would authorize us to decide that the United States are bound to pay interest in any case where a debt is ascertained to be due to a claimant? For the present purpose it is unnecessary to consider the question, how far the United States may be bound to pay interest under the name of "damages," or "injuries," or "indemnity," or "satisfaction," or "redress," or corresponding words in treaty stipulations. It is the question in the present case that we intend to determine, and nothing more. Upon other matters, not now before us, it would be premature to express an opinion.

Nor, as has before been intimated, do we feel ourselves called upon to say how far it would be just and equitable for the United States to pay interest by analogy to the laws and usages which regulate pecuniary dealings between individuals. If Congress, to whom the enactment of laws belong, think it proper to provide that the United States shall pay interest on sums due from them, and to appropriate money for that purpose, it is an easy matter for them to carry that opinion into effect, and to pass such laws as they may deem expedient. But we have a sufficiently responsible duty to perform in applying to the cases before us such principles of law and equity as we find established, without assuming upon ourselves the further duty of recommending to Congress the passage of laws to supply any such deficiencies as may be supposed to exist.

We are aware that in the numerous and extensive pecuniary dealings between the citizens of the United States and their government, cases must arise where, according to the usual understanding among individuals, a refusal by the United States to pay interest would be regarded as wholly unjustifiable. But such legislation, as a regard to the national faith may require, is the peculiar duty of Congress. If we were to report to Congress that a claimant should receive interest, in the absence of an agreement to that effect, it must be either because he is legally entitled to it, or because we have that general discretion possessed, according to some of the cases, by a jury. We

do not think that, as regards the United States, either of these propositions is correct. We shall, therefore, report only a bill in favor of paying to the claimant the sum due him, without interest, to which interest may be added if Congress should see fit to allow it; or Congress can pass a general law on the subject, with such modifications and limitations as they may deem expedient.

34th CONGRESS, 1st Session. } HO. OF REPRESENTATIVES. { REPORT C. C. No. 2.

ISADORE D. BEAUGRAND.

[To accompany bill H. R. C. C. No. 1.]

MARCH 6, 1856.—Reported from the Court of Claims.
MAY 16, 1856.—Ordered to be printed.

ISADORE D. BEAUGRAND *vs.* UNITED STATES.

To the House of Representatives of the United States:

The undersigned, by direction of the Court of Claims, in pursuance of law, herewith respectfully transmits the following papers in the case above mentioned:

1. Petition of Isadore D. Beaugrand.
2. Opinion of the court.
3. Evidence referred to the court by the House.

[L. S.] SAM'L H. HUNTINGTON,
Chief Clerk Court of Claims.

To the Honorable the Judges of the Court of Claims:

The following copy of petition, vouchers, and exhibits, which were presented to Congress, and referred to the Committee of the House of Representatives on Military Affairs, April 27, 1854, form the basis of your petitioner's present claim:

"*To the Honorable Senate and House of Representatives of the United States in Congress assembled:*

"The petition of Isadore Beaugrand, of Lower Sandusky, now called Fremont, State of Ohio, represents: That on the first day of June, eighteen hundred and forty-six, your petitioner, with sixty-seven others, volunteered to serve the United States twelve months in the war with Mexico, under the command of Capt. E. D. Bradley, (your petitioner being first lieutenant,) which service was honorably performed, and the said company was duly enrolled on the said first day of June. Your petitioner, by order of Captain Bradley, made the best possible arrangement for the subsisting of said company, and for quarters, up to the time of their departure from Maumee to Camp Washington, where they were ordered for the purpose of being mustered into the service of the United States—being five days. Your petitioner further states that, at this particular time, the county commissioners being in session, and more than a usual number of visitors being in town, it was very difficult to procure subsistence and quarters for the company,

and that the amount claimed per day—eighty-one and a quarter cents per day—was the least possible sum that he was enabled to procure for them subsistence and quarters; and further, that he did pay from his own funds this same sum per man, as will more fully appear by the vouchers and other testimony on file in the Treasury Department; and being deprived of his just dues, has been a serious inconvenience to your petitioner. That some time since your petitioner presented his accounts to the War Department for allowance, under the act of Congress of June 2, 1848; and although frequent and urgent applications have been made for a just and legal settlement of his claims, they have ever been refused, until, on or about the first of June last, the Secretary of War allowed the pittance of eighty-seven dollars and forty cents, and a further allowance of money expended for music—being about twenty cents per man for subsistence; whereas it was clearly proved that your petitioner paid from his own funds eighty-one and a quarter cents per man, making the sum as represented by the vouchers on file. And on being informed by the Third Auditor of this allowance, your petitioner refused its acceptance, as he was dissatisfied with the amount awarded; but being informed by the Auditor that by its reception it would not prejudice a future application, and your petitioner being very destitute of funds, he received the amount, and now asks of your honorable body that justice which has been refused him by the Secretary of War.

"And your petitioner further represents, that recently he made a further application to the Secretary of War, with additional testimony, for justice, and also made his claim for interest on the amount expended by him, to which he is entitled by an act of Congress of second of June, one thousand eight hundred and forty-eight, at the same time filing the affidavit which he was informed by the department would be required in order to present his claim in its proper light and prove the same; and although awaiting for a long time for the allowances which he had a right to expect, the Secretary of War declined to act further in the case; and your petitioner now asks of your honorable body that justice which may be his due, as will appear by the vouchers and other testimony that may be presented before you, and are on file in the Treasury Department.

"I. D. BEAUGRAND.

"WASHINGTON, D. C., *April* 26, 1854.

"STATE OF OHIO, } ss.
Sandusky County, }

"On the 24th day of July, 1852, personally appeared before me, a justice of the peace in and for said county and State, Isadore D. Beaugrand, late first lieutenant of company F, 1st regiment Ohio volunteers in the war against Mexico, and makes the following declaration, in order to obtain the benefits of a provision of a law of the United States, passed on the second day of June, A. D. 1848, entitled 'An act to refund money for expenses incurred for subsistence or transportation, furnished for the use of volunteers during the present war, before being mustered into the service of the United States,' which will fully appear by vouchers hereunto annexed, to wit:

" Voucher of Isadore D. Beaugrand, letter A.....	$100 72
" Voucher of Isaac Knapp, letter B.....	81 24
" Voucher of George Barkheimer, letter C.....	68 25
" Voucher* of Fountain & Tureot, letter D.....	60 00
	310 21

"All of which was expended for the members of a volunteer company, which was afterwards mustered into the military service of the United States at Camp Washington, Ohio, on the 29th day of June, 1846, to serve twelve months as company F, 1st (regiment) Ohio volunteers, war against Mexico.

"I. D. BEAUGRAND.

"Sworn to and subscribed before me, this 26th day of July, A. D. 1852.

"A. B. TAYLOR, *J. P.*

"A.

"I hereby certify that I furnished the following number of rations and lodgings, in 1846, to volunteers in Sandusky county, Ohio. Said volunteers were afterwards mustered into the military service of the United States at Camp Washington, and served in Mexico as members of company F, 1st regiment Ohio volunteers.

"*Amount as follows, to wit:*

'1846, June 1.—Furnished 27 volunteers, 3 rations each—total, 81 rations, 25 cents each.....	$20	25
" Lodging 27 volunteers, at 6¼ cents each..	1	68
June 2.—81 rations, at 25 cents per ration.....	20	25
" Lodging 27 volunteers, at 6¼ cents each..	1	68
June 3.—81 rations, at 25 cents per ration.....	20	25
" Lodging 27 volunteers, at 6¼ cents each..	1	68
June 4.—81 rations, at 25 cents per ration	20	25
" Lodging 27 volunteers, at 6¼ cents each..	1	68
" Rations for 16 additional volunteers, making 48 rations, at 25 cents per ration,	12	00
" Lodging 16 volunteers, at 6¼ cents each,	1	00
	100	72

"And the above price I paid to others who furnished the same order of supplies.

"I. D. BEAUGRAND.

"Sworn to and signed before me, this 22d day of July, A. D. 1852.

"A. B. TAYLOR, *J. P.*

Received of Lieutenant Isadore D. Beaugrand eighty-one dollars

* Referred to Second Auditor.

and twenty-four cents in full for boarding and lodging 25 volunteers, as follows, to wit:

"1646, June 1.—Furnished 75 rations, at 25 cents.....		$18 75
"	Lodging 25 volunteers, at 6¼ cents each,	1 56
June 2.—Furnished 75 rations, at 25 cents per ration.....		18 75
"	Lodging 25 volunteers, at 6¼ cents each..	1 56
June 3.—Furnished 75 rations, at 25 cents per ration		18 75
"	Lodging 25 volunteers, at 6¼ cents each,	1 56
June 4.—Furnished 75 rations, at 25 cents per ration		18 75
"	Lodging 25 volunteers, at 6¼ cents each..	1 56
		81 24

"All of which I furnished for volunteers after they were enlisted, and before being mustered into the service, and afterwards were mustered in as company F, commanded by Captaid Edwin D. Bradley, in the 1st regiment of Ohio volunteers; and I received my pay from Lieutenant Beaugrand at the time of furnishing said rations and lodgings.

"ISAAC KNAPP.

"Sworn to and signed before me, this twenty-sixth day of July, A. D. 1852.

"A. B. TAYLOR, *J. P.*

"C.

"$68.—Received of Lieutenant Isadore D. Beaugrand sixty-eight dollars and twenty-five cents, payment in full, for furnishing sixty-seven volunteers three rations each, on the 5th day of June, 1846, when *en route* from Lower Sandusky to Maumee City, and on march to Camp Washington.

"Total number of rations 201, at 25 cents per ration.....	$50 25
"And for my team (two horses) 31 miles and returning, hauling baggage and provisions.....	6 00
"And for my four-horse team, hauling two days the baggage of said 67 volunteers to Maumee.....	12 00
	$68 25

"All of which was furnished by me as aforesaid, and I received my pay at that time from Lieutenant Beaugrand, who was afterwards, with said volunteers, mustered into the military service of the United States at Camp Washington, to serve twelve months in company F, commanded by Captain Edwin D. Bradley, in the 1st regiment of Ohio volunteers, in the war then existing against Mexico.

"GEORGE BARKHEIMER.

"Sworn to and subscribed before me, this 26th day of July, A. D. 1852.

"A. B. TAYLOR, *J. P.*

"*Abstract of expenses incurred by Lieutenant Isadore D. Beaugrand in supplying volunteers of company F, 1st regiment Ohio volunteers, before being mustered into service.*

"Voucher of Isadore D. Beaugrand, (A)	$100 72
"Voucher of Isaac Knapp, (B)	81 24
"Voucher of George Barkheimer, (C)	68 25
"Voucher* of Fountain & Tureot, (D)	60 00
	310 21

HOUSE OF REPRESENTATIVES.

Report No. 261, 33d Congress, 1st session, made August 3, 1854, by said committee upon said claim, your petitioner begs also to adopt as part of his present petition, to wit:

"That it appears from the papers filed in support of this claim, that a company of volunteers, for service in the Mexican war, was raised in the vicinity of Sandusky, Ohio, mainly through the patriotic exertions of E. D. Bradley and Isadore Beaugrand, the former of whom was elected captain of the company, and the latter a lieutenant.

"That previous to said troops being mustered into service, it became necessary to subsist the same at Sandusky, from the 1st to the 5th of June, 1846, inclusive.

"It is in proof that the lowest price at which said troops could be subsisted was eighty-one and a quarter cents per day for boarding and lodging, and that this price *was actually paid* by the said Beaugrand.

"It is in proof before the committee that the amount so expended by Captain Beaugrand, including eighteen dollars paid for transportation of baggage and provisions between Lower Sandusky and Maumee City, was $250 21.

"On presenting his account to the War Department, the item of transportation was allowed, and the daily allowance for subsistence and lodging reduced from 81¼ cents, making the aggregate sum allowed $87 40, instead of $250 21, the sum actually expended by Beaugrand, and leaving a balance of $161 81; for which, together with interest on the same, he now claims payment.

"The joint resolution of Congress of the 3d of March, 1847, authorizes the Secretary of War 'to cause to be refunded to the several States, or to individuals, for services rendered, acting under the authority of any State, the amount of expenses incurred by them in organizing, subsisting, and transporting volunteers, previous to their being mustered into the service of the United States for the present war,' &c.; and by the act of 2d of June, 1848, the provisions of this

* Referred to Second Auditor.

resolution were 'extended so as to embrace all cases of expenses heretofore incurred in organizing, subsisting, and transporting volunteers, *previous to their being mustered and received into the service of the United States* for the present war, whether by States, counties, corporations, or individuals, either acting with or without the authority of any State: *Provided, however*, That proof shall be made, to the satisfaction of the Secretary of War, of the *amount thus expended, and that the same was necessary and proper for the troops aforesaid.*' And by the same act it was further provided 'that, in refunding money under this act, and the resolution which it amends, it shall be lawful to pay interest at the rate of 6 per cent. per annum on all sums advanced by States, corporations, or individuals, in all cases where the State, corporation, or individual paid or lost the interest, or is liable to pay it.' It having been proved to the satisfaction of the committee that the sum of $250 21 *was actually expended* by Captain Beaugrand, in entire accordance with the provisions of the joint resolution and act referred to, and that such expenditure was necessary and proper, and that but $87 40 of the amount having been refunded to him, there is justly due him the balance of said original expenditure—

"Say	$162 81
"And interest on same from the 6th June, 1846, to 1st August, 1854	79 64
"Amount due 1st August, 1854	242 45

"For which sum the committee report a bill," to wit: House of Representatives, 523, (Report 361) 33d Congress, 1st session. This claim was referred to the honorable Court by a resolution of the House of Representatives of 3d March, 1855.

It will thus be seen that your petitioner now claims $162 81, and interest thereon, at the rate of 6 per cent. per annum, from June 6, 1846, until paid.

Your petitioner is the sole owner, and the only person interested in said claim.

All of which is respectfully submitted.

M. THOMPSON,
Attorney for Beaugrand.

COUNTY OF WASHINGTON, } *ss.*
District of Columbia, }

On the 22d day of June, 1855, personally appears before me, one of the justices of the peace in and for the county aforesaid, the above named Isadore D. Beaugrand, and made oath upon the Holy Evangely of Almighty God that the facts and claim above stated are true and just, according to the best of his knowledge and belief.

I. D. BEAUGRAND.

Subscribed and sworn to before me, this 23d day of June, 1855.

THOMAS C. DONN, *J. P.*

I. D. BEAUGRAND
vs.
THE UNITED STATES.

The opinion of the Court was delivered by Chief Justice Gilchrist.

By the resolution of March 3, 1847, it was provided that the Secretary at War should "cause to be refunded to the several States, or to indviduals, for services rendered, acting under the authority of any State, the amount of expenses incurred by them in organizing, subsisting, and transporting volunteers previous to their being mustered and received into the service of the United States."—9 Stat. at Large, 207.

By the act of June 2, 1848, (9 St., 236,) the provisions of the above resolutions were extended "so as to embrace all cases of expenses heretofore incurred in organizing, subsisting, and transporting volunteers previous to their being mustered and received into the service of the United States for the present war, whether by States, counties, corporations, or individuals, either acting with or without the authority of any States: provided, however, that proof shall be made to the satisfaction of the Secretary at War of the amount thus expended, and that the same was necessary and proper for the troops aforesaid."

The 3d section of the act provides that it shall be lawful to pay interest at the rate of six per cent. on all sums advanced by States, corporations, or individuals, in all cases where the State, corporation, or individual paid or lost the interest, or is liable to pay it.

It is under this act and resolution that the petitioner presents his claim; and from the copies of the vouchers accompanying the petition, it appears that he has expended the sum of $250 21 for the purposes mentioned in the act. The sixty-seven volunteers mentioned in the petition constituted company F, first regiment Ohio volunteers, and the expenses incurred were for their subsistence for five days, from the 1st to the 5th of June, 1846, inclusive. The claimant alleges that the lowest price for which the troops could be subsisted was 81¼ cents per day for boarding and lodging. Upon the presentment of his claim to the War Department, he was allowed the sum of $87 40, being about twenty cents per day, and he was allowed nothing more. He subsequently made a further application to the department with additional testimony, and also made his claim for interest on the amount expended by him, but the Secretary declined to act further in the case. It appears from the petition that the county commissioners were in session at Fremont at the time the troops were subsisted by the claimant, and that, there being more visitors in town than usual, it was impossible to procure subsistence and quarters for them for a less sum than 81¼ cents per day.

If the allegations in the petition are proved to be true, the claimant is entitled to recover of the United States the sum of $162 81, being the balance of the sum of $250 21, after deducting the sum of $87 40, which has been paid him, with the interest on the amount paid, according to the provisions of the act.

The papers in this case submitted to the House, in connexion with the memorial of the claimant, have been laid before us.

The Hon. Mr. McClelland, the Secretary of the Interior, certifies

nor authorized him to present any claim for transportation against the United States, but that he was paid by the claimant.

Upon consideration of the evidence we are of the opinion that it is proved that eighty-one and a quarter cents per day was the lowest price for which the troops could be subsisted at Fremont from the 1st to the 5th of June, 1846, inclusive, and that the claimant is entitled to recover of the United States the sum of $162 81, with interest, according to the resolution and act hereinbefore referred to; and we accordingly report a bill to carry this decision into effect.

THE UNITED STATES,
To Isadore D. Beaugrand, (late lieutenant,) DR.

(Act June 2, 1848.)

For subsistence, quarters, and transportation furnished Capt. E. D. Bradley's company of Ohio volunteers, from the 1st to the 5th of June, 1846, inclusive, prior to their muster into the service of the United States for the Mexican war, as follows:	
224 rations (board and lodging) at 25 cents per ration.....	$56 00
67 rations (board) at 20 cents per ration.....	13 40
Transportation of baggage.....	18 00
(Per statement and vouchers herewith.)	
	87 40
Allowed on decision of the honorable Secretary of War, of the 1st instant, per report and decision also herewith.....	87 40
Due him.....	87 40

TREASURY DEPARTMENT,
Third Auditor's Office, June 8, 1853.

By W. S. E.

SECOND COMPTROLLER'S OFFICE,
June 11, 1853.

Ex., C. BIRGE.

TREASURY DEPARTMENT,
Third Auditor's Office, March 23, 1854.

SIR: Agreeably to the request herewith of J. J. Langdon, esq., attorney of Isadore D. Beaugrand, I have the honor again to submit for your decision the claim of the latter for money expended in raising Capt. E. D. Bradley's company of Ohio volunteers in June, 1849, prior to muster into service for the Mexican war, upon a statement, also herewith, of Samuel R. Custis, who was at the time adjutant gen-

eral of the State of Ohio, and afterwards colonel of one of the regiments that went from that State to Mexico. I also submit the previous reports from this office upon the claim, with the decisions of yourself and your predecessor thereon, under the former of which an allowance was made to the amount of $87 40. The claimant is dissatisfied, and now asks interest upon what he has already received, and that he may be paid 81¼ cents for subsistence and quarters per man per day, which he alleges was the amount actually paid by him. You decided on the 1st of January last that he should be paid at the same rates paid by the State of Ohio for subsisting volunteers at the same time; and believing, from an examination of the accounts of the State, that 25 cents for subsistence and quarters, or 20 cents for the former, was about an average, to that extent his claim was settled. I have again caused the accounts of the State of Ohio to be examined, and find that 7½ cents per ration was the lowest, and 43¾ cents the highest paid—the rates between these sums being 10, 12, 18¾, 20, 25, and 37½ cents each, there being but one instance of the lowest and highest rates, and by far the most numerous cases being those of 12 and 20 cents each. If I have erred in fixing the rate, the case is respectfully submitted for your correction, there being no doubt that your decision was in accordance with the rule that the allowances should in all cases be the same, or an approximation to the same, as paid by the United States, or to other claimants.

With great respect, your most obedient servant,

F. BURT,
Auditor.

Hon. JEFFERSON DAVIS,
Secretary of War.

TREASURY DEPARTMENT,
Third Auditor's Office, April 26, 1854.

SIR: The enclosed application of Isadore D. Beaugrand, referred by you to this office yesterday, I have the honor to submit for your decision thereon.

The claimant respectfully asks that *interest* may now be allowed him according to law; and, in accordance therewith, I would recommend that *interest* be now allowed upon the sum of $87 40—heretofore allowed under the act of June 2, 1848, from the date of the payment by the claimant to within three months after the passage of said act of June, (say 2d of September, 1848,) and from the date of presentation of the claim, November 10, 1852, until its payment by the United States, June 11, 1853.

I also transmit herewith three reports in the case, viz: of November 16, 1852, May 21, 1853, and March 24, 1854.

I remain, sir, very respectfully, your obedient servant,

F. BURT,
Third Auditor.

Hon. JEFFERSON DAVIS,
Secretary of War.

TREASURY DEPARTMENT,
Third Auditor's Office, May 21, 1853.

SIR: I have the honor to submit herewith, for your decision, *additional proof* transmitted to this office on the 24th ultimo, by Thomas H. Ford, esq., attorney of the claimant, in further support of the claim of Isadore D. Beaugrand, late a lieutenant of Captain E. D. Bradley's company of Ohio volunteers, for subsistence, quarters, and transportation furnished said company from the 1st to the 5th of June, 1846, inclusive, prior to muster into the service of the United States for the Mexican war, amounting to $310 21; of which sum $60 has been referred to the Second Auditor's office.

I also transmit herewith all the papers as originally filed in this office, together with the report of my predecessor, and the decision of the late Secretary of War (Hon. C. M. Conrad) upon the claim of November 16, 1852.

I have the honor to be, with great respect, your obedient servant,

F. BURT,
Third Auditor.

Hon. JEFFERSON DAVIS,
Secretary of War.

TREASURY DEPARTMENT,
Third Auditor's Office, November 16, 1852.

SIR: Under the provisions of the act of June 2, 1848, I have the honor to submit for your decision the claim of Isadore D. Beaugrand, late a lieutenant of Capt. E. D. Bradley's company of Ohio volunteers, for subsistence, quarters, and transportation furnished said company, from the 1st to the 5th of June, 1846, inclusive, prior to their muster into the service of the United States for the Mexican war, amounting to $310 21; of which, the sum of $60 has been referred to the Second Auditor for his action thereon—(Thomas H. Ford, esq., attorney.)

The claim is represented by four vouchers, as follows:

	Voucher A.—For rations furnished twenty-seven volunteers, three rations each.		
1846.			
June 1	81 rations, at 25 cents per ration	$20 25	$6 75
	Lodging for 27 volunteers, at 6¼ cents each	1 68	
June 2	81 rations, at 25 cents per ration	20 25	6 75
	Lodging for 27 volunteers, at 6¼ cents each	1 68	
June 3	81 rations, at 25 cents per ration	20 25	6 75
	Lodging for 27 volunteers, at 6¼ cents each	1 68	
June 4	81 rations, at 25 cents per ration	20 25	6 75
	Lodging for 27 volunteers, at 6¼ cents each	1 68	
	Rations for 16 additional volunteers, making 48 rations, at 25 cents per ration	12 00	4 00
	Lodging for 16 volunteers, at 6¼ cents each	1 00	
		100 72	

CLAIM.—Continued.

	Voucher B.—Receipt of Isaac Knapp, for rations and lodging for twenty-five volunteers, as follows:		
1846.			
June 1	75 rations, at 25 cents per ration	$18 75	$6 25
	Lodging for 25 volunteers, at 6¼ cents each	1 56	
June 2	75 rations, at 25 cents per ration	18 75	6 25
	Lodging for 25 volunteers, at 6¼ cents each	1 56	
June 3	75 rations, at 25 cents per ration	18 75	6 25
	Lodging for 25 volunteers, at 6¼ cents each	1 56	
June 4	75 rations, at 25 cents per ration	18 75	6 25
	Lodging for 25 volunteers, at 6¼ cents each	1 56	
		81 24	
	Voucher C.—Receipt of George Barkheimer, for subsistence and transportation, as follows:		
	Rations for 67 men, three rations each, furnished Captain Bradley's company while on their march from Lower Sandusdy to Maumee City, and on march to Camp Washington, viz:		
	201 rations, at 25 cents per ration	50 25	13 40
	Two-horse team, 31 miles and returning, for hauling baggage and provisions	6 00	6 00
	Four-horse team hauling for two days the baggage of 67 volunteers to Maumee	12 00	12 00
		68 25	87 40
		250 21	

The foregoing account of Lieutenant Beaugrand is sworn to before a justice of the peace, as also the receipts of Messrs. Knapp and Barkheimer, as being correct as stated.

By reference to the roll of muster of Captain Bradley's company, it will be seen that it consisted of sixty-seven men, including commissioned officers; that they were enrolled at Lower Sandusky, Ohio, on the 6th of June, 1846, and paid from said date; that they were mustered into the service of the United States on the 29th of June, at Camp Washington, having also received from the United States their regular travelling pay and allowances to the place of muster.

It will be further seen, by an examination of the claim of the State of Ohio, that John Smith charged the sum of $46 13, on account of subsistence between the 1st and 7th of June, 1846; and that he also charged the sum of $21 for the hire of seven teams for two days in transporting the company from Lower Sandusky to Maumee, Ohio.

Vouchers A and B of the claim being for three rations per day each, while the men are entitled to but one ration, (according to the regulations of the subsistence department,) and the same having been furnished two days prior to the date of the primary enrolment of the company, (as shown by the rolls,) should, in accordance with former decisions, be *disallowed*. The claimant should also be required to fur-

nish bills and receipts for the amount expended by him, per voucher A.

That portion of the voucher which relates to subsistence furnished on the 5th of June should also be *disallowed*, for the same reason as voucher B.

The charge for one two-horse and one four-horse team, should, in my opinion, be also disallowed. As before stated, there has already been presented by the State of Ohio an account of John Smith, for the hire of seven teams for two days ($21) for the transportation of Captain Bradley's company from Lower Sandusky to Maumee, being for the *same service* as now claimed for by Lieutenant B., and being equal to two four-horse wagons, the number allowed by the rules of your department for the transportation of the baggage and provisions of a company of from 50 to 75 men.

I am, sir, with great respect, your obedient servant,

J. S. GALLAHER,
Auditor.

Hon. C. M. CONRAD,
Secretary of War.

[Endorsement on the above.]

WAR DEPARTMENT,
December 13, 1852.

I do not think that only one ration per day is admissible. It is evident that by three rations per day the claimant means three *meals;* and if the price be reasonable, the whole might be allowed. I concur with the Auditor in requiring proof as to the actual date of enrolment, and explanations as to particulars in which this claim conflicts with that of the State of Ohio. It should also be stated why this claim was not presented to the agent of the State of Ohio when other expenses of the same company and for the same object were paid.

In cases like this, the testimony of the captain who commanded the company ought to be produced, or its absence accounted for.

C. M. CONRAD,
Secretary of War.

TATE OF OHIO, *Sandusky County:*

On the 24th day of July, 1852, personally appeared before me, a justice of the peace in and for said county and State aforesaid, Isadore D. Beaugrand, late first lieutenant of company F, first regiment Ohio volunteers, war against Mexico, and makes the following declaration, in order to obtain the benefits of the provisions of a law of the United States, passed on the 2d day of June, A. D. 1848, entitled "An act to refund money for expenses incurred, subsistence, or transportation, furnished for the use of volunteers during the present war, before being mustered into the service of the United States;" which will fully appear by vouchers hereunto annexed, to wit:

Voucher of Isadore D. Beaugrand, letter A	$100 72
Voucher of Isaac Knapp, letter B	81 24
Voucher of George Barkheimer, letter C	68 25
Voucher of Fountain & Turcat,* letter D	60 00
	310 21

All of which was expended for the members of a volunteer company, which was afterwards mustered into the military service of the United States at Camp Washington, Ohio, on the 29th day of June, 1846, to serve twelve months, as company F, 1st Ohio volunteers, war against Mexico.

J. D. BEAUGRAND.

Sworn to and subscribed before me, this 26th day of July, A. D. 1852.

A. B. TAYLOR, *J. P.*

A.

I hereby certify that I furnished the following number of rations and lodgings in 1846 to volunteers in Sandusky county, Ohio. Said volunteers were afterwards mustered into the military service of the United States at Camp Washington, and served in Mexico as members of company F, First regiment Ohio volunteers.

Amount as follows, to wit:

1846, June 1.—Furnished 27 volunteers 3 rations each—total 81 rations, 25 cents each	$20 25
" 1.—Lodging 27 volunteers, 6¼ cents each	1 68
June 2.—81 rations, at 25 cents per ration	20 25
" 2.—Lodging 27 volunteers, 6¼ cents each	1 68
June 3.—81 rations, at 25 cents per ration	20 25
" 3.—Lodging 27 volunteers, 6¼ cents each	1 68
June 4.—81 rations, at 25 cents per ration	20 25
" 4.—Lodging 27 volunteers, 6¼ cents each	1 68
" 4.—Rations for 16 additional volunteers—making 48 rations, at 25 cents per ration	12 00
" 4.—Lodging 16 volunteers, 6¼ cents each	1 00
	100 72

And the above price I paid to others who furnished the same order of supplies.

J. D. BEAUGRAND.

Sworn to and signed before me, this 26th day of July, A. D. 1852

A. B. TAYLOR, *J. P.*

* Voucher D referred to Second Auditor.

B.

Received of Lieutenant Isadore D. Beaugrand eighty-one dollars and twenty-four cents, in full, for boarding and lodging 25 volunteers, as follows, to wit:

1846, June 1.—Furnished 75 rations, at 25 cents per ration	$18 75
" 1.—Lodging 25 volunteers, 6¼ cents each	1 56
June 2.—Furnished 75 rations, at 25 cents per ration	18 75
" 2.—Lodging 25 volunteers, 6¼ cents each	1 56
June 3.—Furnished 75 rations, at 25 cents per ration	18 75
" 3.—Lodging 25 volunteers, 6¼ cents each	1 56
June 4.—Furnished 75 rations, at 25 cents per ration	18 75
" 4.—Lodging 25 volunteers, 6¼ cents each	1 56
	81 24

All of which I furnished for volunteers after they were enlisted, and before being mustered into the service, and afterwards were mustered in as company F, commanded by Captain Edwin D. Bradley, in the 1st regiment of Ohio volunteers, and I received my pay from Lieut. Beaugrand at the time of furnishing said rations and lodging.

ISAAC KNAPP.

Sworn to and signed before me, this 26th day of July, A. D. 1852.

A. B. JAYLOR, *J. P.*

C.

$68.—Received of Lieutenant Isadore D. Beaugrand sixty-eight dollars and twenty-five cents, payment in full, for furnishing 67 volunteers three rations each, on the 5th day of June, 1846, when *en route* from Lower Sandusky to Maumee City, and on march to Camp Washington.

Total number of rations 201, at 25 cents per ration	$50 25
And for my team, (two horses,) 31 miles and returning, hauling baggage and provisions	6 00
And for my four-horse team hauling two days the baggage of said 67 volunteers to Maumee	12 00
	$68 25

All of which was furnished by me as aforesaid, and I received my pay at that time from Lieutenant Beaugrand, who was afterwards with said volunteers mustered into the military service of the United States at Camp Washington, to serve twelve months in Company F,

commanded by Capt. Edwin D. Bradley, in the 1st regiment of Ohio volunteers, in the war then existing against Mexico.

GEORGE BARKEIMER.

Sworn to and subscribed before me, this 26th day of July, A. D. 1852.

A. B. TAYLOR, *J. P.*

Abstract of expenses incurred by Lieutenant Isadore D. Beaugrand, in supplying volunteers of company F, first regiment of Ohio volunteers, before being mustered into service.

Voucher of Isadore D. Beaugrand, (A)	$100 72
Voucher of Isaac Knapp, (B)	81 24
Voucher of George Barkeimer, (C)	68 25
Voucher* of Fountain & Torket, (D)	60 00
	310 21

Interest from June, 1846.

THE STATE OF OHIO, } *ss.*
Sandusky County, }

I, D. Capper, clerk of the court of common pleas, in and for said county, do hereby certify that Austin B. Taylor, esq., before whom the foregoing affidavits were taken, was, at the time of taking the same, an acting justice of the peace in and for said county, duly commissioned and qualified, and authorized by the laws of this State to administer oaths, and that his signature thereto is genuine.

In testimony whereof, I hereto subscribe my name and affix the [L. S.] seal of said court at Fremont, this 26th day of July, A. D. 1852.

D. CAPPER, *Clerk.*

Mr. Howe, from the Committee on Military Affairs, reported the following bill:

A BILL for the relief of Captain Isadore D. Beaugrand.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Treasury be, and he is hereby, authorized and directed to pay to Isadore D. Beaugrand, out of any money in the treasury not otherwise appropriated, two hundred and forty-two dollars and forty-five cents—the same being for expenses incurred and money expended by the said Beaugrand for subsistence, quarters, and transportation furnished Cap-

*Referred to Second Auditor.

tain E. D. Bradley's company of Ohio volunteers from the first to the fifth of June, eighteen hundred and forty-six, inclusive, prior to their muster into the service of the United States for the Mexican war.

AUGUST 3, 1854.

Mr. Howe, from the Committee on Military Affairs, made the following report:

The Committee on Military Affairs, to whom was referred the petition of Isadore D. Beaugrand for compensation for expenditures incurred by him for subsistence, quarters, and transportation furnished Captain E. D. Bradley's company of Ohio volunteers, prior to their muster into the service of the United States for the Mexican war, beg leave to report:

That it appears, from the papers filed in support of this claim, that a company of volunteers for service in the Mexican war was raised in the vicinity of Sandusky, Ohio, mainly through the patriotic exertions of E. D. Bradley and Isadore D. Beaugrand, the former of whom was elected captain of the company, and the latter a lieutenant.

That previous to said troops being mustered into service, it became necessary to subsist the same at Sandusky from the 1st to the 5th of June, 1846, inclusive.

It is in proof that the lowest price at which said troops could be subsisted was eighty-one and a quarter cents per day for boarding and lodging, and that this price *was actually paid* by the said Beaugrand.

It is in proof before the committee that the amount so expended by Captain Beaugrand, including eighteen dollars paid for transportation of baggage and provisions between Lower Sandusky and Maumee City, was $250 21.

On presenting his account to the War Department, the item for transportation was allowed, and the daily allowance for subsistence and lodging reduced from 81¼ cents to 25 cents, making the aggregate sum allowed $87 40, instead of $250 21, (the sum actually expended by Beaugrand,) and leaving a balance of $162 81; for which, together with interest on the same, he now claims payment.

The joint resolution of Congress of the 3d of March, 1847, authorizes the Secretary of War "to cause to be refunded to the several States, or to individuals, for services rendered, acting under the authority of any State, the amount of expenses incurred by them in organizing, subsisting, and transporting volunteers, previous to their being mustered into service of the United States for the present war," &c.; and by the act of 2d June, 1848, the provisions of this resolution were "extended so as to embrace all cases of expenses heretofore incurred in organizing, subsisting, and transporting volunteers, *previous to their being mustered and received into the service of the United States* for the present war, whether by States, counties, corporations, or individuals, either acting with or without the authority of any State: *Provided, however,* That proof shall be made to the satisfaction of the Secretary of War of the *amount thus expended, and that*

the same was necessary and proper for the troops aforesaid." And by the same act it was further provided, "that in refunding moneys under this act, and the resolution which it amends, it shall be lawful to pay interest at the rate of six per cent. per annum on all sums advanced by States, corporations, or individuals, in all cases where the State, corporation, or individual paid or lost the interest, or is liable to pay it." It having been proved to the satisfaction of the committee that the sum of $250 21 *was actually expended* by Captain Beaugrand, in entire accordance with the provisions of the joint resolution and act referred to, and that such expenditure was necessary and proper, and that but $87 40 of the amount having been refunded to him, there is justly due him the balance of said original expenditure—

Say	$162 81
And interest on the same from the 6th June, 1846, to 1st August, 1854	79 64
Amount due 1st August, 1854	242 45

For which sum the committee report a bill.

To the honorable Committee on Military Affairs of the House of Representatives:

GENTLEMEN: In regard to the claim of I. D. Beaugrand, now before your committee for adjustment, for furnishing subsistence for part of Captain E. D. Bradley's company of volunteers, enrolled at Lower Sandusky, Ohio, now called Fremont, we do hereby certify that we are familiar with the hotel charges in said place, having had occasion to put up at the several hotels in the town, and we do say that their charges range from one dollar to one and a quarter per day.

From our knowledge of and acquaintance with Captain Beaugrand, who was first lieutenant of the above-named company, which was afterwards mustered into the United States service for the war with Mexico, we are satisfied that he acted in good faith, and used all exertion to subsist his men at as low rate as possible; and the price of eighty-one and a quarter cents is, in our opinion, as low as subsistence and quarters could be obtained in that place at that time.

We made statements similar to this to the Secretary of War some months since, and are informed by Captain Beaugrand that said statements were either mislaid or lost in the War Department; hence, by his application, we most cheerfully renew our former statement in the case.

F. W. GREEN,
W. D. LINDSLEY,
A. P. EDGERTON.

WASHINGTON, D. C., *July* 27, 1854.

HOUSE OF REPRESENTATIVES,
Washington, March 22, 1854.

SIR: I take pleasure in stating that I am personally acquainted with General John Bell, Isaac Knapp, John L. Green, esq., and Jonas Smith, who have made affidavits, &c., in the claim of Captain Isadore Beaugrand, now before your bureau, and know them to be men of the highest standing for respectability in the community in which they live, and their statements and acts are entitled to the fullest credit. I am also acquainted with Mr. Beaugrand, and am satisfied that he would claim nothing to which he is not entitled.

Yours, &c.,
F. W. GREEN.

F. BURT, *Third Auditor.*

Depositions of William Parrish and George Barkeimer.

STATE OF OHIO, } ss.
Sandusky County, }

Before me personally appeared William Parrish and George Barkeimer, who, being duly sworn according to law, depose and say, that they have never receipted to John M. Smith, nor did they authorize said Smith to present their claims against the government of the United States for the transporting of the baggage and provisions of Captain E. D. Bradley's company from Lower Sandusky (now Fremont) to Maumee City—said company was afterwards mustered into the United States service in the war with Mexico, as F company, 1st regiment Ohio volunteers; but do hereby acknowledge a full payment of Lieutenant I. D. Beaugrand, of said company, as per our vouchers now on file in the proper department at Washington.

his
WILLIAM x PARRISH. [L. S.]
mark.
GEORGE BARKEIMER. [L. S.]

Sworn to and acknowledged before me, this fifteenth day of January, A. D. 1853. In faith of which, I hereto set my hand and notarial seal. [L. S.]

E. F. DICKINSON,
Notary Public, Sandusky County, Ohio.

Memorandum.

In the claim of the State of Ohio, it will be seen that John W. Smith charged $46 13 for subsisting Captain E. D. Bradley's company of Ohio volunteers from the 1st to the 7th of June, 1846; and he also charged $21 for the hire of seven teams for two days in transporting the company from Lower Sandusky to Maumee.

Deposition of I. D. Beaugrand.

I, Isadore D. Beaugrand, late lieutenant of company F, 1st Ohio regiment volunteers, who has presented a claim to the government of the United States for boarding and lodging volunteers before being mustered in the service, June, 1846, and being requested by the report of the Third Auditor, 15th December, 1852, to furnish bill and receipts for the amount paid as claimed in my voucher (letter A) in said schedule, now before the Auditor and Secretary of War, hereby certify that, at the time of said volunteering and furnishing said boarding and lodging, I was keeping house, and supplied said soldiers, after they were volunteers, with boarding and lodging, and charged at the rate I paid others for the same supplies, as will be seen by voucher (B) in said schedule, as per Isaac Knapp. And in said vouchers throughout, in place of the word three *rations* per day, the word *meals* should have been used.

I. D. BEAUGRAND.

Sworn to and subscribed before me, this 25th day of January, A. D. 1853.

JOHN BELL,
Probate Judge.

FREMONT, OHIO.

To the honorable Committee on Military Affairs of the House of Representatives:

GENTLEMEN: In regard to the claim of I. D. Beaugrand, now before your committee for adjustment, for furnishing subsistence for part of Captain E. D. Bradley's company of volunteers, enrolled at Lower Sandusky, Ohio, now called Fremont, we do hereby certify that we are familiar with the hotel charges in said place, having had occasion to put up at the several hotels in the town, and we do say that their charges range from one dollar to one and a quarter per day.

From our knowledge of and acquaintance with Captain Beaugrand, who was 1st lieutenant of the above-named company, which was afterwards mustered into the United States service for the war with Mexico, we are satisfied that he acted in good faith, and used all exertion to subsist his men at as low rate as possible; and the price of eighty-one and a quarter cents is, in our opinion, as low as subsistence and quarters could be obtained in that place at that time.

We made statements similar to this to the Secretary of War some months since, and are informed by Captain Beaugrand that said statements were either mislaid or lost in the War Department; hence, by his application, we most cheerfully renew our former statement in the case.

F. W. GREEN,
W. D. LINDSLEY,
A. P. EDGERTON.

WASHINGTON, D. C., *July* 27, 1854.

NATIONAL HOTEL,
Washington, September 21, 1853.

SIR: The report made to your predecessor in the War Department, Hon. C. M. Conrad, in regard to my accounts, was met by the inquiry, "Why did you not present those accounts at the time the State of Ohio was settled with on account of the troops furnished by the State in 1846?" My reply to this inquiry is—

1st. That from the time of the enrolment of our company, and its departure for the seat of war, there was only about a month, or from 1st of June to 2d of July, and during that time, I had no knowledge of any appropriation made by the government, except for subsistence while at Cincinnati.

2d. On the disbanding of my company F, 1st Ohio regiment, at the expiration of the term of service, (one year,) I did not return to my residence, but engaged in the service in the quartermaster's department, under Captain Arthur. We were ordered to Vera Cruz, where I remained the most of my time until the termination of the war; therefore I never obtained the vouchers now on file in my case in the proper department until my final return home.

I now beg leave to state the reasons why I should not be classed in, or compelled to conform to, the arrangements entered into between the government of the United States and that of Ohio with regard to subsistence furnished:

1st. Having no government funds in my hands, or quarters furnished for my men, I was compelled to apply for quarters at the several public houses, and used my best efforts to obtain them at the lowest possible rates. The bills of expenses thus incurred by me were paid in good faith, with the expectation that the government would allow them; and without my having done just exactly what I did in the premises, it would have been utterly impossible for me to have retained the company. I made every effort to raise and transport them to headquarters at Camp Washington, near Cincinnati, with strict regard to economy as to the expenditure of the government; and if you will do me the favor to examine and compare the results, I think you will find that the expense incurred on behalf of my company is less, according to the distance, than that of any other company belonging to the regiment.

I have the honor to be, with great respect, your obedient servant,
I. D. BEAUGRAND.

Hon. JEFFERSON DAVIS,
Secretary of War.

SEPTEMBER 27, 1853.

Captain Beaugrand, who will have the honor to hand you this, is well known to me, and has been so for many years. He is a highly meritorious man and valuable citizen, and I doubt not that any statement he may make in regard to the matter of his accounts, or any other matter, may be fully relied on.

W. ALLEN, *Ohio.*

To the PRESIDENT.

I fully concur in the statement of Mr. Allen within, in relation to Captain Beaugrand, and add that his character and standing is of the first order, and his patriotic services everywhere conceded where known.

S. MEDARY.

WASHINGTON, D. C., *April* 14, 1854.

I, Isadore D. Beaugrand, being duly sworn according to law, do swear that, having paid the bills for subsisting the company of Captain Bradley, the claim for which is now before the Secretary of War, and having been deprived of the amount therein stated from the date of payment to this date, he has lost the interest therein; and further, he has paid higher rates of interest than six per cent. allowed by law, in consequence of this deficiency, and that the full amount claimed would not make him good for laying out of the money, and he now claims the six per cent. allowed by law.

Subscribed and sworn this 14th day of April, 1854.

I. D. BEAUGRAND.

Sworn to and subscribed before me, this 14th of April, 1854.

F. S. MYER, *J. P.*

HOUSE OF REPRESENTATIVES, *April* 10, 1854.

Lieutenant I. D. Beaugrand has called upon me, in the absence of the Hon. F. W. Greene, the representative from his district, to certify to the correctness of the charge of eighty-one cents per day for the board and lodging of soldiers or other persons at hotels when staying temporarily, or not by the week.

Having resided in northwestern Ohio for many years, and travelled all over it, I have had every opportunity of knowing the prices usually charged and paid by travellers or transient boarders at hotels, taverns, boarding-houses, &c. I have therefore no hesitation in saying that eighty-one cents per day is a reasonable charge, and such a one as would have to be paid at any of those places for board and lodging by the day for a temporary period. The usual charge is one dollar per day. I have myself paid at Lower Sandusky, where I have been very frequently, one dollar and one dollar and twenty-five cents per day. These have been about the average prices for years past.

Very respectfully,

A. P. EDGERTON.

WASHINGTON CITY, *March* 28, 1854.

By request of Captain Beaugrand, I take pleasure in stating that my place of residence is at Toledo, Ohio, and that I am conversant with the markets of provisions both at Cincinnati and at Fremont;

and as far as my knowledge extends I can truly say, that all kinds of provisions are much higher at Fremont than at Cincinnati, and for the best of reasons, the west end of Lake Erie is nearer the New York market.

JOHN E. HUNT.

WASHINGTON COUNTY, } ss.
District of Columbia, }

Personally appeared before me, F. S. Myer, one of the justices of the peace in and for said district, I. D. Beaugrand, who being duly sworn according to law, says, that at the time of the enrolment of Capt. Bradley's company with himself, in June, 1846, it was difficult to obtain subsistence for their men, it being at the time of the meeting of the county commissioners, at which time the town is generally crowded with country people, and the public houses being generally full makes it difficult to obtain quarters for any large number of men. Having no funds of the government in his hands, nor quarters provided, and having the company in charge by order of Captain Bradley, who was temporarily absent on business, this deponent was under the necessity of making arrangements for the subsistence of the men, as he did, which the vouchers in the War Department will show. In contracting for the subsistence, he did it to the best advantage and at as low a rate as possible, and the sum of eighty-one cents per day for each man was the lowest rate at which he could procure their subsistence, notwithstanding he constantly kept in view and practised the strictest economy; and further, that all transaction by him in furnishing subsistence and transportation, etc., were *bona fide* transactions, and all bills were paid in good faith, and that the amount of bills as rendered were paid by him to the full amount as represented. And further this deponent saith not.

I. D. BEAUGRAND.

WASHINGTON CITY, D. C., *April* 7, 1854.

Sworn to and subscribed before me, this 12th of April, 1854.

F. S. MYER.

SIR: I have known Captain Beaugrand, of Ohio, for many years, and believe him to be a gentlemen of integrity. There are few who stand higher in his region of the State. Any attention bestowed upon him will be kindly regarded by yours, truly,

R. McCLELLAND.

Colonel DAVIS,
Secretary of War.

TREASURY DEPARTMENT,
Third Auditor's Office, July 18, 1854.

SIR: I have the honor to acknowledge the receipt to-day of your

letter of the 13th instant, in which you request that the papers relating to the claim of Isadore D. Beaugrand, late lieutenant of Ohio volunteers in the Mexican war, for subsistence, quarters, and transportation furnished Captain E. D. Bradley's company of said volunteers, in 1846, may be referred for examination to the Committee on Military Affairs of the House of Representatives.

In reply, I enclose herewith two settlements, Nos. 2902 and 5206, which contain all the evidence in support of the claim, and also the several reports of the Third Auditor in relation thereto, with the decisions of the Secretary of War endorsed.

As these papers belong to the files of this office, I have to request that they may be returned when the committee shall have no further use for them.

With great respect, your most obedient servant,

F. BURT,
Auditor.

Hon. C. J. FAULKNER,
Chairman of Committee on Military Affairs, House of Reps.

THE UNITED STATES,

To Isadore D. Beaugrand, DR.

(Act of June 2, 1848.)

To interest upon the sum of $87 40, allowed by the Secretary, June 1, 1853, under the act of June 2, 1848, from the dates of payment of said sum—5th and 6th June, 1846—to within three months after the passage of the act of June, say 2d September, 1848; and from the day of presentation of the claim, 2d November, 1852, until its payment by the United States, 11th June, 1853, per statement herewith	$14 96
Allowed on decision of the Secretary of War, of the 10th of May, 1854, per report and decision also herewith.	
Interest due	$14 96

TREASURY DEPARTMTNT,
Third Auditor's office, May 16, 1854.

By H. McNEIL.

TREASURY DEPARTMENT,
Second Comptroller's office, May 16, 1854.

GEO. D. ABBOT.

Memorandum of prices paid for rations.

Camp Washington, Cincinnati	$0 10
Hanging Rock, marching twenty-four hours	27

Hocking volunteers, one day	$0 41
Steubenville, meals 12½ cents	37½
In transit from Hanging Rock, per day	30
Mansfield, Ohio, meals and lodging	20
Mansfield, Ohio, meals and lodging, 12½ cents	20
Hocking, Ohio, per day	44
Dayton, Ohio	20
Transporting B company seven days, at 2.89	41
Columbus, Ohio	20
Chillicothe, Ohio	20
Columbus, Ohio, 25 cents	20
Columbus, Ohio	20
Circleville, Ohio	17¾
Marching from Columbus to Cincinnati	20
Standing	18
Zanesville, Ohio	20
Zanesville to Cincinnati, transportation, meals and lodging on steamboat	75
Camp Washington, 20 cents	44

WASHINGTON CITY, NATIONAL HOTEL,
February 24, 1854.

I am requested to state what I know in regard to subsistence of troops mustered into the United States as Ohio volunteers for the war in Mexico.

Under the provisions of the call, I was directed by the governor of Ohio to collect the volunteers in the shortest time possible. I was at the same time appointed adjutant general and mustering officer. A call was made, and companies were formed in all parts of the State. I gave some general suggestions as to the economy of transportation and subsistence; but their being no officers of the subsistence I did not feel myself authorized to take these matters up in detail. Volunteers came to Camp Washington in all possible modes. Those collected in the north and most remote part of Ohio came under company organizations and generally by canal. Transportation and subsistence must have been arranged by themselves. In the absence of quartermasters and commissariat, I appointed or detailed officers at Camp Washington to perform this duty, and they in some instances adjusted such accounts presented at Camp Washington.

Among the companies arriving from northern Ohio was one from Lower Sandusky, (now Fremont,) commanded by Captain Bradley.

There was a contract for furnishing subsistence *at Camp Washington, Cincinnati;* but this did not extend to subsistence before the troops arrived at Cincinnati.

I do not recollect details in the matter of Captain Bradley's company; but I am confident that no contract could have been made which extended to subsistence between Fremont and Cincinnati, ex-

cept such as the officers and men may have made themselves with the captains of boats. Stated upon honor.

SAMUEL R. CURTIS,
Late Adj't Gen. of Ohio, and late Col. 3d Reg't Ohio Vols.

MANSFIELD, OHIO,
April 24, 1853.

SIR: Herewith enclosed, I forward you further testimony in support of the claim of Lieut. I. D. Beaugrand, of Captain E. D. Bradley's company F, first Ohio volunteers, for subsistence, quarters, and transportation furnished said company from the 1st to the 6th of June, 1846, prior to their being mustered into the military service of the United States at Camp Washington; said expenses for which Lieut. Beaugrand claims pay were incurred at Lower Sandusky where said company was organized, and also on advance as far as Maumee City.

Captain Bradley and the State of Ohio paid the expenses of said volunteers from Maumee City to Camp Washington.

I hope the testimony presented herewith will be satisfactory. When you refer to the affidavit of Captain Bradley, of company F, now on file in the Third Auditor's office, claiming pay for money advanced in forwarding said volunteers, his said affidavit is in support of the bill of Gilbert Beach for expenses between Maumee City and Camp Washington, and showing that $21,500—all the funds received from the State authorities—was paid to said Beach for expenses incurred between Maumee City and the camp; and Lieut. Beaugrand could not have received any pay or remuneration for money advanced by him for expenses at Lower Sandusky and to Maumee City, from the 1st of June to the 6th, as per affidavits of General Bell and Colonel Green.

Very respectfully, your obedient servant,

THOMAS FORD,
Attorney for Counsel.

THIRD AUDITOR, TREASURY UNITED STATES,
Washington City, D. C.

Statement of Interest.

Statement of interest upon the claim of Isadore D. Beaugrand, late a lieutenant of Captain E. D. Bradley's company, Ohio volunteers, for subsistance, quarters, and transportation furnished said company in June, 1846, amounting to $87 40, allowed by the Hon. Secretary of War on the 1st of June, 1853, under the act of the 2d of June, 1848. Interest upon said sum, at the rate of six per cent per annum, to be allowed as follows, and payable under same act:

"From the date of the payment by the claimant to within three months after the passage of said act of June, say 2d September, 1848;

and from the date of presentation of the claim, 2d November, 1852, until its payment by the United States, 11th June 1853.

"Approved by the Secretary of War, 10th May, 1854."

Abs.	Dates.	Time.			Amount.	Interest.
		Years.	Months.	Days.		
A..	From June 5, 1846, to September 2, 1848, and from November 2, 1852, to June 11, 1853	2	10	7	$31 00	$5 31
B..	Same dates as above	2	10	7	25 00	4 28
C..	June 6, 1846, as above	2	10	6	31 40	5 37
					87 40	14 96

Interest has been computed from 5th and 6th June, for the reason that Lieutenant Beaugrand is not supposed to have paid for each day's board of the men, as it *daily* became due, but at some subsequent date, say the next days, the 5th and 6th June, as above.

Respecting abstract A, as Lieutenant Beaugrand was not a hotel-keeper, nor a dealer in articles of subsistence, I am of opinion that it comes within the Secretary's decision, allowing interest for money advanced, and therefore recommend payment as above stated.

TREASURY DEPARTMENT,
Third Auditor's Office, May 15, 1854.

By H. McNEIL.

Deposition of Jonas Smith.

STATE OF OHIO, } *ss.*
Sandusky County, }

Personally appeared before me Jonas Smith, who, being duly sworn according to law, deposeth and saith, that on the first day of June, A. D. 1846, a company of men was organized for the United States service in the war with Mexico. Said company was in command of Captain E. D. Bradley, and Lieutenant I. D. Beaugrand; that I was at that time acting as a justice of the peace of said county, and by order of the brigadier inspector, I did on said first day of June, A. D. 1846, administer the requisite oath to sixty-seven men of said company.

JONAS SMITH. [L. S.]

FREMONT, OHIO, *January* 27, 1853.

Sworn to and subscribed before me, this 27th day of January, A. D. 1853.

E. F. DICKINSON, J. P.
In and for said County.

STATE OF OHIO, } ss.
Sandusky County, }

I, D. Capper, clerk of the court of common pleas in and for said county, do hereby certify that Jonas Smith, esq., was on the first day of June, A. D. 1846, an acting justice of the peace in and for said county, duly commissioned and qualified, and was authorized by the laws of this State to administer oaths; and I further certify that Edward F. Dickinson, esq., before whom the foregoing affidavit was taken, is and was at the time of taking the same an acting justice of the peace in and for said county, duly commissioned and qualified, and authorized by law to administer oaths, and that his signature within written is genuine.

In testimony whereof, I hereto subscribe my name and affix the seal of said court at Fremont this 28th day of January, A. D. 1853.

[L. S.] D. CAPPER, *Clerk*.

WASHINGTON, *March* 15, 1853.

DEAR SIR: I herewith transmit a power of attorney of I. D. Beaugrand, and also the certificate of Gen. Curtis, late adjutant general of the State of Ohio, and respectfully request that the case of the claim of Mr. Beaugrand for moneys expended in subsisting the company of Captain Bradley, to which he was attached from the time of the enrolment of said company to the time the men were on board the canal boat for transportaion to Cincinnati, may be re-examined, and I doubt not you will come to the conclusion that Captain Beaugrand is not only justly but legally entitled to seventy cents per day, for the subsistence of the men, (the maximum,) and which has been allowed in similar cases, particularly so—as it is perfectly clear that the amount *actually paid exceeds this sum;* and further, I request that the usual allowance of interest may be allowed, not only on the balance due, but on the amount of $87 40 already paid.

If it does not appear that Captain Beaugrand acted in good faith, and the money honestly expended for the subsistence of the company, prior to the contract for transporting the company to Cincinnati, and that the amount demanded is less than the sum paid, and only such sum which the Department has been in the practice of paying, I ask not for an award.

Very respectfully, your obedient servant,

J. JAY LANGDON, *Attorney*.

F. BURT, Esq., *Third Auditor*.

P. S.—The certificate of Gen. Curtis I left with Mr. Taylor.

J. J. L.

Certificate of Gen. John Bell.

FREMONT, *January* 25, 1853.

I certify that in the year 1846 I was major general of the 17th division Ohio militia, including the second brigade, and that said

brigade was called out by my order to the brigadier general on the 1st day of June, 1846, for the purpose of raising a company therefrom for the service of the United States in the war with Mexico; that on that day Captain E. D. Bradley and Lieutenant I. D. Beaugrand, with sixty-seven others, volunteered for said service; that said officers then took charge of the men who had thus volunteered, and remained in command of them until they left Sandusky county for the purpose of proceeding to the seat of war, which was on the 6th day of June, A. D. 1846, and afterwards were mustered into the United States service at camp Washington, near Cincinnati, in the 1st regiment Ohio volunteers.

JOHN BELL,
Late Maj. General 17th Division Ohio Militia.

Power of Attorney.

Know all men by these presents, that I, Isadore D. Beaugrand, of Fremont, late Lower Sandusky, Ohio, have appointed, and do by these presents constitute and appoint, J. J. Langdon, of the city of Washington, District of Columbia, my true and lawful attorney for me, and in my name to demand of the United States government and receive all sums of money which may be found due me for the transportation and subsistence of company F, 1st Ohio regiment of volunteers, from the time of their enrolment to the mustering into the service of the United States for the war with Mexico; and also for the interest on the act so awarded, hereby confirming and ratifying all his acts by virtue hereof.

Given under my hand and seal this 17th day of February, A. D. 1854.

ISADORE D. BEAUGRAND.

Signed, sealed, and delivered before me, the third day of March, 1854. J. W. BECK, *J. P.*

Deposition of Gen. John L. Greene.

FREMONT, *January* 17, 1853.

I certify that in the year 1846 I was brigade inspector of the second brigade, 17th division of Ohio militia; that by order of the brigadier general said brigade was, on the 1st day of June, 1846, called out for the purpose of raising a company therefrom for the service of the United States in the war with Mexico; that on that day Captain E. D. Bradley and Lieutenant I. D. Beaugrand, with sixty-seven others, volunteered for said service; that said officers then took charge of the men who had thus volunteered, and remained in command of them until they left Sandusky county for the purpose of proceeding to the seat of war, which was on the 6th day of June, A. D. 1846.

JOHN L. GREENE,
Late Brigade Major, 2d Brigade, 17th Division Ohio Militia.

Sworn to and subscribed before me, this seventeenth day of January, A. D. 1853. In faith of which, I hereto set my hand and seal notarial.

E. F. DICKINSON,
Notary Public, Sandusky County, Ohio.

WAR DEPARTMENT,
Washington, April 22, 1854.

SIR: I have received your letter of the 14th instant respecting the claim of Captain I. D. Beaugrand.

You are mistaken in supposing that I refused to re-examine the claim, upon the production of additional evidence. That evidence was considered; but it failed to show that any further allowance should be made than that already paid by the Auditor, and I declined to direct any change in the settlement.

In reply to your request for copies of the papers, to be laid before Congress, I have to state that the department uniformly declines to furnish documents for this purpose, preferring to communicate them directly to Congress when called for by either House, or a committee.

Very respectfully, your obedient servant,

JEFF'N DAVIS,
Secretary of War.

J. J. LANGDON, Esq.,
Washington, D. C.

WASHINGTON, *April* 14, 1854.

SIR: Understanding that you have refused to make a re-examination of the claim of I. D. Beaugrand for moneys paid for subsisting Captain Bradley's company, although much additional testimony has been presented, and the small amount paid him was received with the express understanding that it would not lessen the claim for the balance, I have to request, in his behalf, that he may be furnished with copies of the accounts and evidence in support of them, that he may appeal to Congress for relief.

Very respectfully,

J. J. LANGDON.

Hon. JEFF'N DAVIS,
Secretary of War.

Enrolled June 6, Lower Sandusky, and paid from the date of enrolment, 67 men, including commissioned officers—six months' clothing.

TREASURY DEPARTMENT,
Third Auditor's Office, April 19, 1854.

SIR: Relative to the application referred by you to this office yesterday, of J. Jay Langdon, on behalf of I. D. Beaugrand, to be fur-

nished with copies of all the papers in support of his claim for subsisting Captain E. D. Bradley's company of Ohio volunteers prior to muster into service for the Mexican war, for the purpose of appealing to Congress for relief, I have the honor to state that the *rule* in this office, in such cases, is to furnish the original papers when requested by the committee to whom the claim may be referred, or to any member thereof.

The letter of Mr. Langdon is herewith returned.

I am, very respectfully, your obedient servant,

F. BURT, *Auditor.*

Hon. JEFF'N DAVIS,
Secretary of War.

TREASURY DEPARTMENT,
Third Auditor's Office, February 14, 1853.

SIR: At the request of Captain Thomas H. Ford, attorney, I herewith return to your office the report of the Second Auditor upon the claim of Lieutenant Isadore D. Beaugrand, for expenses incurred and paid by him in raising Captain E. B. Bradley's company F, 1st Ohio volunteers, prior to their muster into service for the Mexican war, amounting to sixty dollars, and which was received at this office from you on the 14th of December, 1852.

I remain, sir, very respectfully, your obedient servant,

J. THOMPSON,
Acting Auditor.

Hon. C. M. CONRAD,
Secretary of War.

To the honorable Senate and House of Representatives of the United States in Congress assembled:

The petition of Isadore D. Beaugrand, of Lower Sandusky, now called Fremont, State of Ohio, represents: That on the 1st day of June, 1846, your petitioner, with sixty-seven others, volunteered to serve the United States twelve months in the war with Mexico, under the command of Captain E. D. Bradley, (your petitioner being 1st lieutenant,) which service was honorably performed, and the said company was duly enrolled on the 1st day of June.

Your petitioner, by order of Captain Bradley, made the best possible arrangement for the subsisting of said company and for quarters up to the time of their departure from Maumee to Camp Washington, where they were ordered for the purpose of being mustered into the service of the United States—being five days. Your petitioner further states, that at this particular time the county commissioners being in session, and more than an usual number of visitors in town, it was very difficult to procure subsistence and quarters for the com-

pany, and that the amount claimed per man, 81¼ cents per day, was the least possible sum that he was enabled to procure for them subsistence and quarters; and further, that he did pay from his own funds this said sum per man, as will more fully appear by the vouchers and other testimony on file in the Treasury Department; and being deprived of his just dues has been of serious inconvenience to your petitioner. That some time since your petitioner presented his accounts to the War Department for allowance, under the act of Congress of June 2, 1848; and although frequent and urgent applications have been made for a just and legal settlement of his claims, they have ever been refused, till on or about the 1st of June last, the Secretary of War allowed the pittance of $87 40, and a further allowance of money expended for music, being about 20 cents per man, for subsistence, &c.; whereas it was clearly proved that your petitioner paid from his own funds 81¼ cents per man, making the sum as represented by the vouchers on file. And on being informed by the Third Auditor of this allowance, your petitioner refused its acceptance, as he was dissatisfied with the amount awarded; but being informed by the Auditor that by its reception it would not prejudice a future application, and your petitioner being very destitute of funds, he received the amount, and now asks of your honorable body that justice which has been refused him by the Secretary of War.

And your petitioner further represents, that recently he made a further application to the Secretary of War, with additional testimony, for justice, and also made his claim for interest on the amount expended by him, to which he is entitled by an act of Congress of ——— ———, at the same time filing the affidavit which he was informed by the department would be required in order to present his claim in its proper light, and prove the same; and although awaiting for a long time for the allowances to which he had a right to expect, the Secretary of War declined to act further in the case. And your petitioner now asks of your honorable body that justice which may be his due, as will appear by the vouchers and other testimony that may be presented before you, and on file in the Treasury Department. And as in duty bound will ever pray.

I. D. BEAUGRAND.

WASHINGTON, D. C., *April* 26, 1854.

Rep. C. C. 2——3

34th CONGRESS, 1st Session. } HO. OF REPRESENTATIVES. { REPORT C. C. No. 3.

JOHN SHAW.

[To accompany bill H. R. C. C. No. 1.]

MARCH 6, 1856.—Reported from the Court of Claims.
MAY 16, 1856.—Ordered to be printed.

JOHN SHAW *vs.* THE UNITED STATES.

To the House of Representatives of the United States:

The undersigned, by direction of the Court of Claims, in pursuance of law, herewith respectfully transmits the following papers in the case above mentioned:

1. Petition of John Shaw.
2. Opinion of the court.
3. Evidence referred to the court by the House.

The case was submitted for decision, by consent, without briefs.

[L. S.] SAMUEL H. HUNTINGTON,
Chief Clerk Court of Claims.

To the honorable the Court of Claims:

The undersigned respectfully represents, that he is a citizen of Marquette county, Wisconsin, and that the United States are justly indebted to him in the sum of one thousand dollars, with interest from the year 1828, for this: That in the year 1828 the Hon. John Scott, of Missouri, was appointed by the War Department to represent the United States at a special term of the circuit court at Prairie du Chien, in the county of Crawford, then in the Territory of Michigan, in prosecution before said court of *nine* Winnebago Indians for the murder of a white family. More than half the jurors, and many of the witnesses, spoke the French language, and did not understand the English language.

That it was found impossible to proceed in the trials without a skilful and accurate interpreter of the French and English languages. Several persons were tried without success, when Mr. Scott employed your petitioner, then in Missouri, more than five hundred miles from the place of trial, and he accordingly attended, was sworn as interpreter of the proceedings of the court, and performed the duty satisfactorily to all parties; that he was absent from his business on said duty nearly or quite two months; that in going to the place of trial he travelled the whole distance at his own expense, through an almost

unbroken wilderness, exposed to many dangers and hardships. And when, in addition to these, the great responsibility of the duty performed is considered, he thinks his charge not unreasonable.

Your petitioner would further state, that he is solely interested in said claim, never having assigned any part of it; and that he has never been paid the same, or any portion thereof.

That he presented his petition to the 33d Congress, at its first session, and the same was referred in the Senate to the Committee on Indian Affairs; that a favorable report was made by said committee, and a bill passed accordingly, granting your petitioner one thousand dollars.

That at the second session of said Congress, in the House of Representatives, his petition was referred to the Committee on Indian Affairs, which committee reported back the Senate bill, recommending its passage, without amendment; which was committed to a Committee of the Whole House; and, without further action, the petition, on the 3d of March, 1855, was referred to the Court of Claims.

Your petitioner asks the favorable action of this court on the same. And as in duty bound, will ever pray.

Dated at Washington, this 15th day of December, 1855.

JOHN SHAW.

This case comes before us by a resolution of the House of Representatives, and is submitted for our decision upon the evidence laid before Congress.

The facts proved are, that in the months of August and September of the year 1828, a special term of the circuit court of the United States was held at Prairie du Chien, in the Territory of Michigan, for the trial of nine Indians charged with the murder of some white men in the vicinity of the prairie. The Hon. John Scott, of Missouri, was appointed by the War Department to appear for the United States on the trial. It was necessary that some one should be found who could interpret the Winnebago language both into French and English; but the only persons who could perform the duty of interpreting could do so only into the French language. Several persons were tried who were found incompetent, when Mr. Scott procured the claimant to act as an interpreter. He performed the duty well, and to the entire satisfaction of Mr. Scott, and also of Mr. Hempstead, who appeared as counsel for the Indians, and of the court. In order to reach Prairie du Chien, he travelled five hundred miles from Missouri, at his own expense, through an almost unbroken wilderness, exposed to many dangers and hardships, in a country filled with hostile Indians, and which could be traversed only on horseback or in keel or pirogue boats. The importance which was attached to the trials of the prisoners—nine in number—may be inferred from the fact that Mr. Scott was employed to come five hundred miles to appear as counsel for the United States, and both he and Mr. Hempstead were paid one thousand dollars each for their services as counsel.

Without the services of a skilful interpreter the cases could not have

been tried, as more than half of the jurors were Frenchmen, and did not understand English.

At the 1st session of the 33d Congress Mr. Sebastian, from the Senate Committee on Indian Affairs, reported a bill allowing the claimant the sum of one thousand dollars for his services. At the 2d session of the 33d Congress Mr. Maxwell, from the House Committee on Indian Affairs, made a report recommending the passage of the bill from the Senate.

The opinion of the court is, that the claimant has a legal cause of action against the United States. Mr. Scott was appointed by the War Department to manage the prosecution on behalf of the government. In order that the evidence should be properly laid before the jury, it became necessary to employ an interpreter, and he accordingly employed the claimant. In this he did not exceed his authority; for if he had not done so he could not have fulfilled the trust reposed in him. The service was rendered twenty-eight years ago, and the claimant has never received any compensation. Under the circumstances, we think he is entitled to receive the sum of one thousand dollars for his services; and we report a bill accordingly, to carry this decision into effect.

Petition of John Shaw for compensation as Interpreter.

The undersigned, your petitioner, a citizen of Marquette county, Wisconsin, begs leave to represent to your honorable body that, in the year 1828, he was employed by the honorable John Scott, of Missouri, who had been appointed by the War Department to represent the United States at a special term of the circuit court, at Prairie du Chien, in the county of Crawford, then in the Territory of Michigan, to prosecute certain Winnebago Indians charged with the murder of a white family in the vicinity of the place named, as an interpreter in the French and English languages; that he was engaged by said Scott in the city of St. Louis, Missouri, to perform the service mentioned, and travelled thence, at his own expense, upwards of five hundred miles, to said Prairie du Chien; that there were nine Indians tried at the said term of the United States circuit court for murder, your petitioner being employed between three and four weeks constantly and unceasingly; that he acted under oath to interpret from the French to the English everything that passed either from the court, the lawyers, witnesses, or jurors—more than half the jurors being French, and not understanding the English language; for none of which service has your petitioner ever been paid. He presents herewith the certificate of the honorable James Duane Doty, the United States judge for the fifth judicial district of Michigan Territory, in whose court the petitioner rendered the services for which he now claims to be compensated.

In view of the distance travelled by your petitioner, the hardships endured by him—it being at that time an almost unbroken wilderness between Saint Louis and Prairie du Chien, the only mode of conveyance being keel, Mackinaw, or pirogue boats, or on horseback,

the journey either way being through the country of numerous hostile Indians—he thinks that he is justly and equitably entitled to receive from the United States one thousand dollars for the services hereinbefore mentioned; and as in duty bound, your petitioner will ever pray, &c.

JOHN SHAW.

WASHINGTON, *June* 26, 1854.

MENASHA, WISCONSIN, *May* 20, 1854.

This certifies that I am personally acquainted with John Shaw, now a resident of the State of Wisconsin; that I became acquainted with Mr. Shaw in the year 1828, at Prairie du Chien, whose residence was then in the vicinity of St. Louis, Missouri; that in August and September of that year I held a special term of the circuit court at Prairie du Chien, for the county of Crawford, as the additional judge of the United States for the Territory of Michigan; that said term was ordered by the governor and legislature for the trial of certain Indians charged with the murder of white men in the vicinity of the prairie that Mr. John Scott, of Missouri, was appointed by the War Department to represent the United States at said term for the trial of said Indians, and was informed that he desired Mr. Shaw to attend the court with him as an interpreter in the French and English languages; that the only persons who could be obtained on said trials to interpret the Winnebago language could only interpret into the French language, consequently an interpreter of the French and English became absolutely necessary. Several persons were tried who were found incompetent, when the services of Mr. Shaw were required. He performed this duty well, and to the entire satisfaction of Mr. Scott and of Mr. Hempstead, who appeared for the Indians, as well as of the court. The duty was a very arduous and responsible one, and Mr. Shaw's service was indispensable to a fair and correct trial of the persons who were indicted at that term. He was justly entitled to compensation from the United States for that service, and I earnestly recommend the allowance of a sum proportioned to that which was paid to Mr. Scott by the United States, and to Mr. Hempstead by the Indians—a thousand dollars to each. The importance of the cases may be inferred by the employment of Mr. Scott to come five hundred miles to attend the court. The court was held, I think, from the 25th of August to the 8th of September.

This is the first time Mr. Shaw has asked me for a certificate of his service, which I should have at any time given him.

JAMES DUANE DOTY.

DEPARTMENT OF THE INTERIOR,
Office Indian Affairs, July 5, 1854.

SIR: In reply to your inquiries of 28th ultimo, respecting the case of John Shaw, who claims remuneration for services rendered as an

interpreter in the trial of certain Winnebago Indians, "Whether any claim by him has ever been preferred heretofore, and whether its payment would appear upon the files of the Indian Office?" I have the honor to state that the claim in question was, for the first and only time, as well as can be ascertained, submited to this office on the 10th ultimo, by Mr. Shaw, in the form of a certificate of Judge J. D. Doty, which was returned to him a few days thereafter. Proof of actual payment would be with the accounting officers of the treasury, but the record and files of this office would show, supposing the case to have been acted upon and allowed by it, that the payment had been directed or recommended.

Very respectfully, your obedient servant,

CHARLES E. MIX,
Acting Commissioner.

Hon. W. K. SEBASTIAN,
Chairman Committee Indian Affairs, Senate U. S.

DEPARTMENT OF THE INTERIOR,
Office of Indian Affairs, June 24, 1854.

SIR: I have examined the certificate of Judge Doty, submitted by you, concerning your claim for services as an interpreter in the case of the trial of certain Winnebago Indians for murder, in the year 1828, at Prairie du Chien. The duty of taking such steps as were required, preliminary to the trial, was confided to Governor Lewis Cass. The correspondence between him and the department, also General William Clark, superintendent of Indian affairs at St. Louis, does not furnish any information as to your employment on that occasion. Judge Doty's certificate, however, I deem to be sufficient to prove that you rendered the service for which compensation is now claimed. The expenses incurred in that trial, as reported to the department, were paid out of an especial appropriation by Congress, and as there are no funds now appropriated applicable to the object, it is not in the power of this office to afford you assistance. In my judgment, your only recourse for relief is to Congress.

I return herewith the certificate of Judge Doty.

Very respectfully, your obedient servant,

CHARLES E. MIX,
Acting Commissioner.

JOHN SHAW, Esq.,
Washington, D. C.

IN THE SENATE OF THE UNITED STATES—*July* 7, 1854.

The Committee on Indian Affairs, having had under consideration the claim of John Shaw, report:

That in 1828, a special term of the circuit court of the United States was held at Prairie du Chien, by Hon. James Duane Doty, as

the additional judge of the Territory of Michigan, for the trial of some Winnebago Indians for the murder of citizens of the United States. Under orders from the War Department, Mr. John Scott was sent a distance of five hundred miles to prosecute the case, and otherwise represent the United States, who found it necessary to procure an interpreter. Several were tried and discharged, who could only interpret the Winnebago language into French; but, as it was necessary to get an interpreter who understood the Winnebago, French, and English languages, the services of Mr. Shaw were obtained, who lived then at St. Louis. He, during the trial, performed that service satisfactorily to the court, and the attorneys both for the United States and the Indians. He claims now for his services, and travel and attendance, one thousand dollars. We think it not unreasonable. The judge of the court thinks his services were worth that amount, being the same allowed as extra compensation to the attorneys. A special appropriation was made to cover the expenses of the trial; but it appears, from the official letter of the Indian Office, where these claims were audited, that Mr. Shaw has never either been paid or claimed the amount heretofore. The committee, therefore, report a bill.

IN THE HOUSE OF REPRESENTATIVES—*February* 2, 1855.

The Committee on Indian Affairs, to whom was referred Senate bill No. 437, *for the relief of John Shaw, report:*

That, at a special term of the circuit court of the United States, ordered by the War Department, at Prairie du Chien, in 1828, to try certain Winnebago Indians for the murder of citizens of the United States, John Shaw was employed as interpreter. His services were required by the government. He had to travel at least five hundred miles to attend said court, and was in attendance from the 25th of August to the 8th of September. The service was a difficult one, and no other person present was competent to perform it. He did it well and faithfully, and to the satisfaction of all parties concerned. The presiding judge (James Duane Doty) attests the difficulty and value of that service, and leaves no doubt upon the mind of your committee but that Mr. Shaw is entitled to some compensation therefor. In considering the amount to be allowed, that proposed by the Senate is not deemed unreasonable. To travel the distance he did, from near St. Louis to Prairie du Chien, was at that time a tedious, difficult, and expensive undertaking; and, when to this the important service performed is added, your committee think it but right and fair that he should have the thousand dollars estimated by Judge Doty to be a reasonable compensation.

Mr. Shaw has never been paid for this service, as is shown by the testimony from the department; and, though there has been long delay in presenting the application for payment, this is not deemed a

sufficient reason for denying now a fair compensation, when the evidence is so clearly in his favor.

Your committee, therefore, recommend the passage of the Senate bill.

IN THE HOUSE OF REPRESENTATIVES—*February* 2, 1855.

AN ACT for the relief of John Shaw.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That there be paid to John Shaw, of Wisconsin, the sum of one thousand dollars, in payment for his travel, attendance and service as an interpreter, upon a trial of certain Winnebago Indians, in eighteen hundred and twenty-eight, before Honorable James Duane Doty, at Prairie du Chien; and that sum is hereby appropriated out of any money in the treasury not otherwise appropriated.

34th CONGRESS, 1st Session. } HO. OF REPRESENTATIVES. } REPORT C. C. No. 4.

ROBERT ROBERTS.

MAY 16, 1856.—Reported from the Court of Claims. Committed to a Committee of the Whole House, and ordered to be printed.

ROBERT ROBERTS *vs.* THE UNITED STATES.

To the honorable the Senate and the House of Representatives of the United States:

The following papers in this case (no briefs filed) are respectfully submitted:

1. Two petitions of the claimant.
2. Letter from the State Department (copy.)
3. Opinion of the court.

By order of the court.

In testimony whereof, I have hereunto set my hand and affixed the [L. S.] seal of said Court, at Washington, on the day and year above written.

SAMUEL H. HUNTINGTON,
Chief Clerk Court of Claims.

COURT OF CLAIMS,
Washington, March 5, 1856.

COURT OF CLAIMS.
In re
THE LOSS OF THE SHIP "EXPERIMENT." } Petition of Robert Roberts.

To the Court of Claims:

The petition of Robert Roberts, a citizen of the United States, resident in New York, respectfully shows: That on or about the 28th day of August, in the year 1805, your petitioner and one John Queen, also a citizen of the United States, residing in the said city, were joint owners of the American ship "Experiment," whereof James Moncrief was master, and then lying in the port of New York, and bound on a voyage to Falmouth and Montego bay, in the island of Jamaica; that on or about said 28th day of August, said ship, with a full cargo on board, set sail from New York, and being duly furnished with all necessary papers and documents to prove the entire neutrality of both ship and cargo, prosecuted her said voyage until the 2d day October following, when she arrived at Falmouth in the

said island of Jamaica, where she discharged a part of her cargo, and on the 20th day of said month continued her voyage for Montego bay as aforesaid; and while proceeding to said port the said ship was captured by a French privateer, who took forcible possession of said ship and cargo; that thereafter the said ship (the "Experiment") was recaptured from the said privateer by the English ship-of-war called the "Wolf," and carried back to the said port of Falmouth; whence, after a detention of several days, the said recaptors sailed for said Montego bay, where said "Experiment" was proceeded against by said recaptors in the Court of Admiralty for salvage, and by order of said court said ship and cargo were sold for salvage, and purchased at said sale by said master for the benefit of whom it might concern, and the amount of salvage decreed to the recaptors was paid by said master in pursuance of said decree; and said ship thereafter returned to New York greatly damaged in consequence of said illegal capture and subsequent detention, where she was sold for the benefit of whom it might concern for the sum of $5,688.

And your petitioner further shows, that the value of the said ship, with her outfits on the voyage aforesaid, was the full sum of $14,217 42, and that the charges in Jamaica for salvage the sum of $3,284 82; that the premium of insurance upon the owners' risk, properly allowable to them, amounted to the sum of $421 70, making the whole cost and charges on said ship $17,923 94, and leaving the whole amount of loss $12,235 94.

And your petitioner further shows, that said ship was insured at the office of the Union Insurance Company, of Philadelphia, for the sum of $10,000; and thereafter, upon the capture of said ship, as before stated, the said John Queen and your petitioner received, for and on account of said loss upon the said insurance, the sum of $3,000. In consequence, therefore, of said illegal capture, the final loss sustained by said John Queen and your petitioner (after deducting said sum received from said insurance company) was $9,235 94.

Your petitioner further states, that being erroneously advised that the said ship "Experiment" was captured by a Spanish cruiser, and that her loss constituted a claim provided for by the act of Congress passed March, 1821, to carry into effect the treaty with Spain, concluded with Spain February 22, 1819, he presented a claim for indemnity to the commission appointed to carry said treaty into effect, who certified to the loss, as appears by their report, Doc. 417, of the first session of the twenty-third Congress, p. 17, but disallowed the claim on the ground that the privateer was French instead of Spanish.

Your petitioner further states, that subsequently, and after the conclusion of the treaty with France on the 4th of July, 1831, he attended before the commissioners appointed under said treaty to carry its provisions into effect, and prayed to be allowed indemnification for his aforesaid loss; but the said commissioners decided that the said privateer was Spanish, and that the loss should have been allowed by the commissioners under the treaty with Spain, who had rejected it.

Your petitioner further represents, that in the year 1845 he petitioned Congress for indemnity; that his petition was referred to the Committee of Claims in the House of Representatives, who reported a

bill recognising the validity of your petitioner's claim; which, to the best of your petitioner's knowledge and belief, passed the House, but was not reported to the Senate in due time for the action of that body. The same report was subsequently made by the Committee of Claims to the thirtieth Congress, and is styled report No. 2, to accompany bill No. 2, thirtieth Congress, first session, House of Representatives, December 20, 1847, but never received any final action by Congress.

Your petitioner further respectfully represents, that John Queen, the part owner with him of the ship "Experiment," departed this life on or about the 21st day of April, A. D. 1816, intestate; and that the administration of the goods, chattels, credits, and effects of the said John Queen hath been granted to your petitioner by the surrogate of the city and county of New York, where said Queen resided at the time of his decease; by virtue whereof your memorialist was and is entitled, as the personal representative of said Queen, to receive whatever may be paid or allowed on account of said claim.

Your petitioner further respectfully represents, that he was, and is, entitled to be allowed indemnity under and by virtue of the act of Congress of July 13, 1832, to carry into effect the convention between the United States and his Majesty the King of the French, concluded at Paris on the 4th of July, 1831, for the full amount of his aforesaid loss, after deducting the sum received for insurance as aforesaid, together with interest on the amount of loss from the time when the several amounts awarded by said commissioners became payable.

ROBERT ROBERTS.

CITY AND COUNTY OF NEW YORK, *ss:*

Robert Roberts, citizen of the city and State of New York, being duly sworn, deposes and says, that he has read the foregoing petition; that he knows the contents thereof, and the same is true, except as to those matters stated on his information and belief, and those he believes to be true.

[L. S.] J. S. HARBERGER,
Notary Public.

JOHN BIGELOW,
Attorney and of Counsel for Petitioner.

IN THE UNITED STATES COURT OF CLAIMS.

To the honorable the judges of the Court of Claims:

The petition of Robert Roberts, of the city of New York, State of New York, in his own right, and as administrator of John Queen, respectfully showeth: That your petitioner and the said John Queen were the joint owners of the ship "Experiment," which was captured on her voyage from New York to Jamaica, in the year 1805, by a privateer bearing Spanish colors, and which was immediately thereafter recaptured by a British cruiser and carried into Jamaica, and, under a decree of a British Court of Admiralty, upon a libel filed for salvage by the captors, was sold; that the loss sustained by himself and part-

ner by the capture and detention of the ship, the salvage, and other expenses, was, exclusive of interest, $9,235 44; that the aforesaid capture was without any just cause, and was an infraction of the rights of the United States as a neutral nation, and constituted a good claim for restitution against the government whose vessel the privateer aforesaid was.

And your petitioner further shows, that he presented his claim before the commissioners appointed under the act of Congress of March 3, 1821, to carry into effect the treaty with Spain, concluded the 22d February, 1819; but the claim was disallowed, on the ground that the privateer was French, and not Spanish, it having been so decreed by the British Court of Admiralty when the vessel was condemned.

That your petitioner brought said claim before the board of commissioners appointed to carry into effect the treaty concluded with France in 1831, but said board refused to entertain said claim upon the ground that the privateer making said capture was a Spanish and not a French vessel; so that your petitioner, though clearly entitled to indemnification from one or the other of said governments, has been excluded from the provisions made by each for indemnity for illegal captures, by an alternate denial of jurisdiction.

And your petitioner further shows, that the United States, in the treaties aforesaid, both with France and Spain, has in her sovereign capacity released those governments from all further reclamations and claims to indemnity than such as are therein provided for, of the like character as those therein provided for, and has thereby become responsible for claims of that character which have been excluded from the benefits of the provisions of said treaties.

Your petitioner is informed and believes that there is now remaining in the treasury of the United States a portion of the funds paid by France and Spain for the purpose of satisfying claims to indemnity under the provisions of said treaty, but that at any rate he is entitled to the judgment of this honorable court for the full amount of his loss out of the treasury of the United States; that he is the sole owner of one half of said claim, and the administrator of the sole owner of the other half of said claim; that it has heretofore been presented to Congress, and the action of that body thereon, so far as your petitioner is informed, is as follows: In the 24th, 26th, and 28th Congresses his memorial was not acted upon; in the 25th and 31st Congress s the reports were adverse in the House; and in the 29th and 30th Congresses the reports were favorable, but the bills could not be reached on the calendar before the close of the sessions.

And as in duty bound, your petitioner will ever pray, &c.

ROBERT ROBERTS.

A. H. LAWRENCE,
Attorney for Petitioner.

STATE OF NEW YORK, }
County of New York. } *ss.*

Personally appeared before me, Michael Connolly, a justice of the peace in and for said county, Robert Roberts, and made oath this thir-

teenth day of July, A. D. 1855, that the facts stated in the foregoing petition are true, to the best of his knowledge and belief.

MICHAEL CONNOLLY,
Justice of the Peace.

STATE OF NEW YORK,
City and County of New York. } ss.

I, Richard B. Connolly, clerk of the city and county of New York, and also clerk of the supreme court for the said city and county of New York, being a court of record, do hereby certify that Michael Connolly, before whom the annexed deposition was taken, was at the time of taking the same a justice of the peace in and for said city and county, duly elected and sworn, and that his signature thereto is genuine, as I verily believe.

In testimony whereof, I have hereunto set my hand and affixed the [L. S.] seal of the said court and county, the thirteenth day of July, 1855.

RICHARD B. CONNOLLY, *Clerk.*

DEPARTMENT OF STATE,
Washington, November 20, 1855.

SIR: In compliance with your request, the record of the proceedings of the commissioners under the convention with Spain of 1819, has been examined, and it appears that the claim of Jonathan Jenks, growing out of the capture of the brig "Jane," was duly presented to the board of commissioners, and it was disallowed.

The claim of Robert Roberts, growing out of the capture of the brig "Experiment," was presented to the same board of commissioners, and it was disallowed.

The same claim was also presented to the board of commissioners appointed to carry into effect the treaty with France of 1831, and by that board was also disallowed.

The evidence of those decisions is derived from minutes on the dockets of the several boards of commissioners, but no document can be found in either case stating the principle on which the decision was founded.

I am, respectfully, your obedient servant,

J. A. THOMAS,
Assistant Secretary.

Hon. S. H. HUNTINGTON,
Clerk Court of Claims, Washington.

Judge Blackford delivered the opinion of the Court, which is as follows:

The petition, in this case, relies on an alleged illegal seizure by Spain or France, in 1805, of the brig "Experiment" and on treaties between those nations and the United States.

We shall first examine the case on the petitioner's complaint, that the seizure was by a Spanish vessel.

The United States, by the 9th article of the treaty of 1819 with Spain, renounced all such claims against Spain as the one now before us.

The 11th article of that treaty contains the following provision: "The United States, exonerating Spain from all demands in future, on account of the claims of their citizens to which the renunciations herein contained extend, and considering them entirely cancelled, undertake to make satisfaction for the same, to an amount not exceeding five millions of dollars. To ascertain the full amount and validity of those claims, a commission, to consist of three commissioners, citizens of the United States, shall be appointed by the President, by and with the advice and consent of the Senate, which commission shall meet at the city of Washington, and within the space of three years from the time of their first meeting, shall receive, examine, and decide upon the amount and validity of all the claims included within the descriptions above mentioned. The said commissioners shall take an oath or affirmation, to be entered on the record of their proceedings, for the faithful and diligent discharge of their duties; and in case of the death, sickness, or necessary absence of any such commissioner, his place may be supplied by the appointment as aforesaid, or by the President of the United States, during the recess of the Senate, of another commissioner in his stead. The said commissioners shall be authorized to hear and examine, on oath, every question relative to the said claims, and to receive all suitable authentic testimony concerning the same. And the Spanish government shall furnish all such documents and elucidations as may be in their possession, for the adjustment of the said claims, according to the principles of justice, the laws of nations, and the stipulations of the treaty between the two parties of 27th October, 1795. The said documents to be specified, when demanded, at the instance of the said commissioners."

The commissioners thus provided for by the treaty were afterwards appointed, and the board was organized at the city of Washington in June, 1821. The statement of the petition, relative to the action of said board on the claim we are considering, is as follows: "And your petitioner further shows, that he presented his claim before the commissioners appointed under the act of Congress of March 3, 1821, to carry into effect the treaty with Spain concluded the 22d February, 1819, but the claim was disallowed, on the ground that the privateer was French and not Spanish, it having been so decided by the British Court of Admiralty when the vessel was condemned."

We understand, from this language of the petition, that said decision of the commissioners was against the claim upon the merits. To sustain the claim, it was necessary to show, among other things, that the seizure was by a Spanish vessel. The petition says that the claim was disallowed on the ground that the privateer was French and not Spanish. That was surely a disallowance on the merits, because it was a disallowance on the ground that a fact, material to the establishment of the claim, was not proved.

The only other question in this part of the case necessary to be

decided is, whether or not the said decision of the board of commissioners is a bar to so much of the petition as alleges the seizure to have been by a Spanish vessel?

We have recently had a question to decide very similar to the one now before us; and the following observations made on that occasion are applicable to this case: "The final decision of the board against the claim was rendered by a tribunal specially provided for by the treaty for the adjudication of such claims; to which tribunal the original claimant had submitted the case for decision; and from which decision there is no appeal given to any other tribunal. The judgment of the board stands upon the same ground with the judgment of any judicial tribunal of exclusive jurisdiction."

"The nature and effect of a judgment of this same board of commissioners, under the same treaty of 1819 with Spain, have been examined and settled by the Supreme Court of the United States. Judge Story, in delivering the opinion of the court, uses the following language: 'The object of the treaty was to invest the commissioners with full power and authority to receive, examine, and decide upon the amount and validity of the asserted claims upon Spain for damages and injuries. Their decision, within the scope of this authority, is conclusive and final. If they pronounce the claim valid or invalid—if they ascertain the amount, their award in the premises is not re-examinable. The parties must abide by it as the decree of a competent tribunal of exclusive jurisdiction. A rejected claim cannot be brought again under review in any judicial tribunal; an amount once fixed is a final ascertainment of the damages or injury. This is the obvious purport of the language of the treaty.'—(Comegys *vs.* Vasse, 1 Peter's Rep. 193, 212; Thomas and others *vs.* The United States, decided by this court.") These decisions are precisely in point, and show that the question we have just been considering must be determined against the claimant.

We are next to examine the case on the petitioner's complaint, that the seizure was by a French vessel. The first article of the convention between the United States and France of the 4th of July, 1831, is as follows: "The French government, in order to liberate itself completely from all the reclamations preferred against it by citizens of the United States for unlawful seizures, captures, sequestrations, confiscations, or destructions of their vessels, cargoes, or other property, engages to pay a sum of twenty-five millions of francs to the government of the United States, who shall distribute it among those entitled, in the manner and according to the rules which it shall determine."—(8 Stat. at Large, 430.)

On the 13th of July, 1832, an act of Congress was passed to carry into effect the said convention with France. The first section of that act is in these words: "The President of the United States, by and with the advice and consent of the Senate, shall appoint three commissioners, who shall form a board, whose duty it shall be to receive and examine all claims which may be presented to them under the convention between the United States and France of the 4th of July, 1831, which are provided for by the said convention, according to the provisions of the same and the principles of justice, equity, and the

law of nations. The said board shall have a secretary versed in th English, French, and Spanish languages, and a clerk, both to be a pointed by the President, by and with the advice and consent of th Senate; and the commissioners, secretary, and clerk shall, before the enter on the duty of their offices, take oath well and faithfully to pe form the duties thereof."—(4 Stat. at Large, 574.)

The commissioners provided for by said act of 1831 were accordingl appointed, and the board was afterwards organized as the act required

The petition contains the following statement: "Your petitione brought said claim before the board of commissioners appointed t carry into effect the treaty concluded with France in 1831, but sai board refused to entertain said claim upon the ground that the privateer making said capture was a Spanish and not a French vessel; so tha your petitioner, though clearly entitled to indemnification from on or the other of said governments, has been excluded from the provisions made by each for indemnity for illegal captures by an alternate denial of jurisdiction." The petition here shows that the last-named board of commissioners rejected the claim upon the merits. The ground of the rejection was, according to the petition, that the offending vessel was Spanish. Now, the claim before that board being for a French spoliation, could not be sustained without proof that the offending vessel was French; and the decision against the claim for the want of that proof was a decision on the merits.

There is but one other question in this part of the case which need be examined, and that is, Whether or not the decision of the last-named board of commissioners is a bar to so much of the petition as alleges the seizure to have been by a French vessel?

Our answer to this question must be similar to that given in the former part of this opinion to another question. The decision against the petitioner made by the commissioners appointed under the treaty with France, to whom he had submitted the present demand to be examined, is a bar to the claim. The board had exclusive jurisdiction of the case under the act of Congress, and there is no law giving an appeal from the judgment to any other tribunal.

It may be proper to mention that, believing the decisions of said two boards of commissioners on the claim now before us to be a very material part of the case, we applied to the State Department for information on the subject. The answer of the department is as follows: "The record of the proceedings of the commissioners under the convention with Spain of 1819 has been examined, and it appears that the claim of Jonathan Jenks, growing out of the capture of the brig 'Jane,' was duly presented to the board of commissioners, and was disallowed. The claim of Robert Roberts, growing out of the capture of the brig 'Experiment,' was presented to the same board of commissioners, and was disallowed. The same claim was also presented to the board of commissioners appointed to carry into effect the treaty with France of 1831, and by that board was also disallowed. The evidence of these decisions is derived from minutes on the dockets of the several boards of commissioners, but no document can be found in either case stating the principle on which the decision was founded."

This communication shows, what the petition admits, that the claim

in question had been disallowed by both said boards of commissioners to which it was presented.

The petition, in order to show the liability of the government of the United States, offers the following argument: "And your petitioner further shows, that the United States, in the treaties aforesaid, both with France and Spain, has in her sovereign capacity released those governments from all further reclamations and claims to indemnity than such as are therein provided for, of the like character as those therein provided for, and has thereby become responsible for claims of that character which have been excluded from the benefits of the provisions of said treaties."

This argument, which assumes the claim to have been valid against either Spain or France, has been already, we think, sufficiently answered. The boards of commissioners, legally organized for the determination of such claims as the one before us, have, upon the application of the petitioner himself, examined his claim and decided against its validity. The fact, therefore, assumed as the basis of the argument, namely, the validity of the claim against either Spain or France previously to the treaties referred to, does not exist.

The decisions of said boards of commissioners against the claim, like the judgment of a court of competent jurisdiction, are, as we have before shown, a bar to this petition for the same demand.

It appears to the court, therefore, that the facts set forth in the petition do not furnish any ground for relief.

34th CONGRESS, 1st Session. } HO. OF REPRESENTATIVES. { REPORT C. C. No. 5

SAMUEL M. PUCKETT.

MAY 16, 1856.—Reported from the Court of Claims. Committed to the Committee of the Whole House, and ordered to be printed.

SAMUEL M. PUCKETT *vs.* THE UNITED STATES.

To the House of Representatives of the United States:

The undersigned, by direction of the Court of Claims, in pursuance of law, herewith respectfully transmits the following papers in the case above mentioned.

1. Petition of Samuel M. Puckett.
2. Opinion of the Court.

[L. S.] SAMUEL H. HUNTINGTON,
Chief Clerk Court of Claims.

WASHINGTON, *March* 5, 1856.

The honorable the Court of Claims, at Washington city, in the District of Columbia.

The petition of Samuel M. Puckett, a citizen of Rankin county, in the State of Mississippi, respectfully represents: That one John E. Richardson became the purchaser of a large tract of land, to wit: the southwest quarter and the west half of southeast quarter section eight; the southeast quarter and the east half of the northwest quarter section seventeen; all of section twenty; the northwest quarter of section twenty-nine; the south half and the northeast quarter of section thirty; and the northwest quarter and the east half of the northeast quarter section thirty-one, township eleven, range eleven east, in Neshoba county, in said State. That for and in consideration of said purchase, three promissory notes were executed by the said John E. Richardson, with your petitioner and one John S. Gooch as his securities, for the sum of ten thousand six hundred and eighty-nine dollars and forty one cents, payable to the United States at one, two, and three years; and that your petitioner, subsequent to the purchase, became a joint partner with the said John E. Richardson in said lands. That the land was sold by the United States marshal as the property of one Wiley P. Harris, who was late register of the land office at Columbus, in said State. That subsequently suits were instituted in the United States district court at Jackson, Mississippi, upon the three promissory notes above mentioned, as they became severally due, and judgments were obtained against the said John E. Richardson, your petitioner, and John S. Gooch, for the several

amounts of said promissory notes, including interest and costs of said suits. Petitioner says that he paid the amount of one of the said judgments and cost in full, and all costs on the other two judgments, and perhaps a small portion of the debt on one of the other judgments. Petitioner says that the whole amount so paid by him was about the sum of five thousand dollars, and that the same (after paying costs of suits) passed into the treasury of the United States, as your petitioner is informed and believes; and that subsequent to the payment of the money as herein stated, he (petitioner) ascertained that the lands sold as the property of Wiley P. Harris was in fact the property of other persons, and that Wiley P. Harris *never* had title to said lands, and consequently no title could pass by virtue of the sale by the United States. That the sale was made without any notice of defect of title, and under the assurance by the United States marshal that he would make title at a future day. But so it is. The United States marshal wholly failed to comply with the conditions of sale in executing title to the land herein described at the time of the sale thereof, or at any other time thereafter, as your petitioner avers and believes.

Therefore, this petitioner says that the consideration of the promissory notes herein described has totally failed, and he says that he believes he is entitled to and demands relief—that is to say, a recovery of and from the United States for the sum of five thousand dollars, with interest from May, 1840, and the cost of this proceeding.

SAMUEL M. PUCKETT, *Claimant.*

Opinion of the Court.

The opinion of the Court was delivered by Chief Justice Gilchrist.

This claim is, substantially, an action against the United States for money had and received. It appears from the petition that the United States marshal for the district of Mississippi sold certain fractional sections of land situated in Neshoba county, in Mississippi, as the property of one Wiley P. Harris, to one John E. Richardson, for the sum of $10,689 41. The claimant and one Gooch became sureties for Richardson for the payment of the purchase-money, and subsequently the claimant became a partner with Richardson in the purchase, and signed promissory notes for the same, payable to the United States. Suits were instituted upon the notes, and judgment obtained thereon against the makers for the amount due, including interest and costs The claimant paid the sum of $5,000, which passed into the treasury of the United States, and subsequent to the payment of the money, he ascertained that the lands sold as the property of Harris in fact belonged to other persons, and that Harris never had any title to them, and consequently no title could pass by virtue of the sale by the United States. The sale was made without any notice of any defect in the title, and under the assurance by the marshal that he would make a title at a future time; which, however, has not been done.

The claimant alleges that the consideration of the notes has totally

failed, and that he is entitled to recover of the United States the sum of $5,000, with interest.

The assurance by the marshal that he would make a title to the land at a future day cannot be the foundation of any right in the claimant. Whatever evidence his declarations may furnish of his personal liability in a suit against himself, they cannot bind the United States. If he steps out of his official duty, and does what the law has given him no authority to do, he may make himself personally responsible, and the injured party must look to him for redress. He is the mere minister of the law to execute the order of the court, and a due discharge of his duty does not require more than that he should give to purchasers a fair opportunity of examining and informing themselves of the nature and condition of the property offered for sale. (The *Monte Allegre*, 9 Wheaton, 645.) Nor upon a judicial sale, which we presume this to have been, is there any implied warranty of title. Neither the marshal nor the auctioneer, while acting in the scope of their authority, can be considered as warranting the property sold, nor can the marshal do any act that shall expressly or impliedly bind any one by warranty.—Ibid., 645. It is on the same principle that it is held in South Carolina that there is no implied warranty in a sale of land made by the ordinary for partition, and the purchaser who has been evicted by title paramount cannot recover the purchase-money back from the ordinary, though it still remains in his hands undisturbed.—Evans *vs.* Dendy, 2 Speers, 9.

So it has often been held that there is no implied warranty in a sheriff's sale.—Yates *vs.* Bond, 2 McCord, 382; Davis *vs.* Murray, 2 Rep. Con. Ct., 143; Bashore *vs.* Whistler, 3 Watts, 490. In South Carolina, where one purchased land at a sheriff's sale to which the defendant in the execution had no title, the Sheriff may compel him by action to pay the purchase-money without having first tendered the sheriff's titles.—Moore *vs.* Akin, 2 Hill, S. C., 403.

As there is no implication of a warranty, the question arises whether upon the principle which regulates the action of assumpsit for money had and received, the claimant can recover of the United States the consideration he has paid.

It is provided by the 1st section of the act of May 7, 1800, (2 St. at Large, 61,) that when the United States shall have received seisin and possession of lands delivered in satisfaction of a judgment, it shall be lawful for the marshal of the district "to expose the same to sale at public auction, and to execute a grant thereof to the highest bidder on receiving payment of the full purchase-money; which grant so made shall vest in such purchaser all the right, estate, and interest of the United States in and to such lands or other real estate." Although there is no express statement to that effect, we can make no other inference from the petition than that the lands mentioned were sold by the marshal by virtue of the authority vested in him by this act. If such be the case, he can do no more than to convey to the purchaser such right and interest as the United States possessed, and therefore the case is like that where a person releases to another all his right and interest in a tract of land, and receives the consideration therefor. If, in such a case, the grantee can recover of the grantor

the consideration he has paid for the release, on the ground that the consideration has failed, then this claimant has a right to recover of the United States.

It has been repeatedly held that where money has been paid for land conveyed by deed of release and quit-claim, it cannot be recovered back, though the title be wholly defective, unless there be fraud on the part of the vender.—Gates *vs.* Winslow, 1 Mass., 65; Wallis *vs.* Wallis, 4 Mass., 135; Emerson *vs.* Washington county, 9 Greenl., 94. In the case of Soper *vs.* Stevens, 2 Shep., 133, it was held that where a note, given in consideration of a quit-claim deed of land, and where there is no fraud, has been paid by the grantee, the money cannot be recovered back on the eviction of the grantee by an older and better title. In all such cases as have been cited, the money is considered as having been paid in consideration of the conveyance of the interest the grantor has in the premises, such as it may be, and not in consideration that the grantor will convey a good title to the land. The grantee buys only what the grantor has to sell, and where, without fraud, he sells only his interest, the consideration cannot be said to have failed, so as to give a right of action to the grantee. The United States are entitled to the benefit of this principle, and, so far as the facts appear in the petition, there is no more reason for permitting the claimant to recover than there would be for rendering a judgment for the plaintiff upon a similar state of facts in an ordinary suit at law. Our opinion is, that upon the case stated the claimant is not entitled to recover, and that there is no principle of law that would authorize us to order testimony to be taken.

34th CONGRESS, 1st Session. } HO. OF REPRESENTATIVES. { REPORT C. C. No. 6.

JOHN P. McELDERRY.

MAY 16, 1856.—Reported from the Court of Claims. Committed to a Committee of the Whole House, and ordered to be printed.

JOHN P. McELDERRY *vs.* THE UNITED STATES.

To the honorable the Senate and House of Representatives of the United States:

The following papers in this case are respectfully submitted:

1. The petition of the claimant.
2. The additional petition.
3. Brief of the claimant.
4. Opinion of the court.

By order of the court.

In testimony whereof, I have hereunto set my hand and affixed the [L. S.] seal of said court, at Washington, on the day and year above written.

SAMUEL H. HUNTINGTON,
Chief Clerk Court of Claims.

COURT OF CLAIMS,
Washington, March 5, 1856.

JOHN P. McELDERRY *vs.* THE UNITED STATES.

To the honorable the Judges of the Court of Claims:

Your petitioner claims compensation for his services as a clerk in the Bureau of Yards and Docks during the months of May and June, eighteen hundred and fifty-one, at the rate of $800 per annum—$133 33, and interest thereon at the rate of six per cent. per annum from the first of July, 1851, until paid.

The facts and circumstances upon which this claimant relies in support of his claim, and also the action of the department thereon, appear in the following petition and correspondence submitted to Congress, to wit:

"The undersigned, your petitioner, respectfully represents: That by act of Congress approved 3d March, 1851, an additional clerk was authorized to the Bureau of Yards and Docks of the Navy Department, to take effect on the first day of July thereafter; that your petitioner was informed on the first day of May, 1851, that the said clerkship would be conferred upon him, and he therefore offered to

enter *at once* upon such duties as were intended to be assigned to him on said first of July; and as the services of your petitioner could be and were made useful to the department, he accordingly entered upon and continued faithfully to perform the duties assigned to him for two months, trusting that the department would find means to compensate him therefor; but in this reasonable expectation your petitioner learns, as the annexed papers will more fully explain, that his only redress is to submit his claim to the justice of Congress; and he therefore prays that he may be allowed $133 33, being two months' compensation for said services, at the rate of eight hundred dollars per annum.

"And your petitioner, as in duty bound, will ever pray.

"JOHN P. McELDERRY."

BUREAU OF YARDS AND DOCKS,
March 25, 1852.

SIR: I have the honor to state that for two months previous to the date of the appointment which I now hold as a clerk in this bureau—viz: May and June, 1851—I performed the same duties that have subsequently been assigned to my desk, and for such services I respectfully ask to be allowed for that period the same rate of compensation which I now receive. I am fully aware that the execution of those duties may be considered as voluntary on my part; yet as the chief clerk of the bureau informed me that I could be usefully employed *at once*, and being at that time desirous of employment, I entered upon the duties in the hope that the department would compensate me therefor.

Trusting that this application will meet with the favorable consideration of the department, I remain, with great respect, your obedient servant,

JOHN P. McELDERRY.

Commodore JOSEPH SMITH,
Chief of Bureau of Yards and Docks.

Copy of the endorsement of Commodore Smith.

Respectfully submitted to the Secretary of the Navy, with the remark that Mr. McElderry was informed that no appropriation had been made for the desk he would occupy till after July 1st. His services were required, however, and he entered upon duty, as he states, accordingly. I would suggest that the department, if it should think proper, could allow from the contingent fund of the department the compensation asked for by Mr. McElderry.

J. S.

MARCH 26, 1852.

NAVY DEPARTMENT, *March* 29, 1852.

SIR: The claim of Mr. McElderry submitted by you cannot be allowed by the department. He must look to Congress.

I am, respectfully, your obedient servant,

WM. A. GRAHAM.

Commodore JOSEPH SMITH,
Chief of Bureau of Yards and Docks.

Said claim was referred to the Committee of Claims of the Senate, April 19, 1852; and December 28, 1852, said committee made a favorable report, (No. 359, 32d Congress, 2d session,) accompanied by a bill (No. 564) for the payment of the claim, which bill passed the Senate February 17, 1854.—(Vide Senate bill No. 176, 33d Congress, 1st session.)

The Committee of Claims of the House of Representatives reported adversely upon said bill July 22, 1854.—(Vide House of Representatives Report No. 339, 33d Congress, 1st session.)

This claim was referred, with others, by a resolution of the House of Representatives, to this honorable court.

Your petitioner is the sole owner, and the only person interested in said claim.

Your petitioner will ever pray, &c.

M. THOMPSON,
Attorney for John P. McElderry.

COUNTY OF WASHINGTON, *District of Columbia, to wit:*

On this 30th day of June, 1855, before me, Henry L. Harvey, a justice of the peace in and for the county aforesaid, personally appears the above named John P. McElderry, and makes oath upon the Holy Evangely of Almighty God, that the facts set forth in the above petition, &c., are true, according to the best of his knowledge and belief.

JOHN P. McELDERRY.

Sworn and subscribed this 30th day of June, 1855, before me.

HENRY L. HARVEY.

JOHN P. McELDERRY
vs.
THE UNITED STATES. } *Petitioner's Brief.*

1. The 12th section of act of 1842, chapter 202, Statutes at Large, volume 5, page 525, has no restraining or binding influence upon this court, and was only intended to prevent the executive officers of the

government from paying out the public money without due and specific authority of law.

2. Congress, by referring this claim to this honorable court, virtually ignored or repealed said section *pro hac vice*, and authorized and directed this court to decide according to the justice, equity, and right of the matter, without reference to said section.

3. Congress enacted said section, and Congress had equal power to suspend or to annul it for the purposes of this case.

4. It is shown that these services were required by those whom the petitioner had a right to suppose, and no doubt did suppose, had the legal discretionary right to employ him; and it being shown that such services were necessary and proper for the public good, and that they were of the value charged, as shown by regularly employing and paying him ever since at the same rate for the performance of similar services, he is entitled to recover as upon a *quantum meruit*.

5. It is not to be presumed that the government desires to enrich itself, or to profit by the time and labor of the individual citizen.

6. The government having accepted these services, and profited by them, is presumed to have assented to what has thus been useful to it, and to have assumed to pay a fair price for them.

7. In the case of the United States *vs.* Macdaniel, 7 Peters' R., the Supreme Court of the United States have fixed and settled the principle that the executive officers of the government have discretionary powers, and need not show a statutory provision for everything they do; and that when such discretion is wisely exercised in the employment of clerks, the government is bound to pay what is fairly and equitably due for valuable services so rendered to the government, even without express authority of law, which principle covers this case.

M. THOMPSON,
Solicitor for Petitioner.

Judge Blackford delivered the opinion of the court, which is as follows:

This is a demand for services as an extra clerk for the months of May and June, 1851, in the Bureau of Navy Yards and Docks.

To sustain the claim, it must appear that the work was performed under an express or an implied contract. That is the principle which governs in all suits for personal services.

The petition, in this case, does not allege, nor do the facts stated in it show, that there was any express contract for the work between the claimant and any agent of the government. We have therefore only to inquire whether there are circumstances set out in the petition from which a contract on the part of the government for the alleged service can be implied. There are not, in our opinion, any circumstances stated which can justify such an implication. The claim, it will be recollected, is for services as an extra clerk. With respect to the appointment of such a clerk, there is an act of Congress of 1842, as follows:

"No extra clerk shall be employed in any department, bureau, or office at the seat of government, except during the session of Congress, or when indispensably necessary to enable such department, bureau, or office, to answer some call made by either House of Congress at one session to be answered at another; and not then, except by order of the department in which, or in some bureau or office of which, such extra clerk shall be employed."—(5 Stat. at Large, p. 526, section 15.) This act shows that no person but the Secretary of the Navy could, under any circumstances, have contracted for the services of this extra clerk. The act, indeed, shows that the Secretary himself could not have made such contract unless Congress was in session at the time, or the service was indispensably necessary to answer such call as the act mentions. But the petition does not state that Congress was in session at the time, and, indeed, we know that it was not. Nor does the petition intimate that the service was rendered in consequence of a call of either House of Congress. It must therefore be considered, judging from the face of the petition, that, had the claimant been employed even by the Secretary of the Navy, the contract would have been void, as being in direct violation of an act of Congress.

But this view of the subject is unnecessary, because the petition gives us no reason to suppose that the claimant was employed by the Secretary. The contrary, in fact, appears from the petition. The claimant's language to the chief of the bureau, namely: "I am fully aware that the execution of those duties may be considered as voluntary on my part," shows that there had been no contract with the Secretary for the performance of the work. The service was voluntary, that is, it was rendered by the claimant of his own accord, without any express or implied request on the part of the government. That is an objection which, of itself, is fatal to the petition. The case of Lampleigh *vs.* Braithwait, Hobart's Reports, p. 105, which decides that a mere voluntary courtesy will not support even an express promise to pay, was decided more than two hundred years ago, and has never been disputed. The case before us is much stronger than the one in Hobart, for here is a voluntary courtesy without any promise of payment. The law wisely prohibits a recovery under such circumstances, on the ground that no one can make another person his debtor without the consent of such other person. The law must be the same as regards the government. It is true, that a person may be liable for work done for him, although the claim depend alone on the fact that he knew of the work whilst it was progressing, and made no objection. There the law may imply a request; but that doctrine does not apply to the case before us, because the services of Mr. McElderry were not performed with the knowledge of any agent of the government authorized, either expressly or impliedly, to request the performance of those services.

The facts set forth in the petition do not, in our opinion, furnish any ground for relief.

34th Congress, 1st Session. } HO. OF REPRESENTATIVES. { Report C. C. No. 7.

LOUIS G. THOMAS AND OTHERS.

May 16, 1856.—Reported from the Court of Claims. Committed to the Committee of the Whole House, and ordered to be printed.

LOUIS G. THOMAS AND OTHERS *vs.* THE UNITED STATES.

To the honorable the Senate and House of Representatives of the United States:

The following papers in this case (no briefs filed) are respectfully submitted:

1. Petition of the claimants.
2. Letter from the State Department (copy.)
3. Opinion of the court.

By order of the court.

In testimony whereof, I have hereunto set my hand and affixed the [L. S.] seal of said court, at Washington, on the day and year above written.

SAMUEL H. HUNTINGTON,
Chief Clerk Court of Claims.

Court of Claims,
Washington, March 5, 1856.

THE UNITED STATES COURT OF CLAIMS.

District of Columbia, } *Washington County.* }

To the honorable the Judges of the Court of Claims:

The petition of Louis G. Thomas, Edward K. Thomas, and Joseph Shermer, guardian of the children of Samuel W. Thomas, deceased, the legal representatives of Hartshorn R. Thomas, deceased, respectfully showeth unto your honors that the government of the United States is justly indebted to them in the sum of $11,732 44, in this:

The said Hartshorn R. Thomas, for a valuable consideration, did, on or about the 16th day of January, 1822, purchase of one Jonathan Jenks a certain claim he held against the government of Spain, arising under the following facts, to wit: In the month of June, in the year 1812, the said Jonathan Jenks was the sole owner of the brig called the Jane, of Philadelphia, commanded by Peter Fosse; which vessel sailed from the port of Philadelphia on the 14th day of March, 1812, with a cargo composed of provisions and one hundred

kegs of gunpowder, bound to Laguayra, where she arrived in safety on the 14th day of April following; and, from the distressed state of the country, her unlading was not completed until the 13th of July, same year. But in the mean time she had reloaded in part, and on the 21st of July the vessel was cleared out at the custom-house of Laguayra, for Philadelphia. She was prevented from sailing by reason of an embargo laid by order of General Miranda, and on the first day of August the royal troops entered the said port.

Captain Fosse soon after received orders to send his sails on shore; and on the 19th of August he received further orders to proceed with the said brig to Puerto Cabello, where she was to stand a trial, and which said orders the said master was obliged to comply with; and on the 23d of September the said vessel and cargo were condemned (as well as several other American vessels in said port) by persons styling themselves judges of a court of admiralty of his Catholic Majesty.

From the said sentence Captain Fosse entered an appeal, and *obtained a decree for the restitution of said vessel and cargo;* but on proceeding to take repossession of the brig, found her completely stripped, and the hull converted into a hulk or prison-ship, and subject, on delivery to him, to very heavy costs. He then petitioned the commandant of marine to have her valued; and after a survey by competent persons, consisting of two master ship-carpenters and the boatswain of the squadron, she was pronounced (including her sails and rigging, which had been taken away) to be worth the sum of two thousand nine hundred and fifty-seven dollars, for which sum he petitioned payment, or the restoration of his vessel as decreed, in the same state she was when condemned.

In answer to his said petition, the military commandant gave him orders to apply for payment to the marine commandant, who rejected the payment; and after repeated petitions, and being bandied about by the two said military commandants, he was at length obliged to abandon the vessel and desist from further attempt to obtain payment or redress for said brig.

The part of the cargo belonging to the said Jonathan Jenks was found, on restitution, so deteriorated as to render an immediate sale indispensable, and was sold at a very heavy loss.

Captain Fosse, after expending a large sum of money in obtaining the best counsel, and his own expenses and that of his mate and crew during so long a period, and despairing of all success in obtaining justice, on the 15th July, 1813, came to the determination of returning to the United States and place all the documents in relation to the vessel and cargo in the hands of his owner.

Your petitioners beg leave to submit the following statement of their claim:

Amount of vessel, as valued at Puerto Cabello, as per document marked B.....	$2,957 00
Demurrage awarded by the American consul at Laguayra—the same as in the case of the brig Cumberland, which vessel was also seized on the 1st August by the royal army.....	2,802 00

Amount of cost of coffee, on account of your memorialist, as per document marked C	$1,230 90	
Proportion of expenses in obtaining restitution of coffee, per said document C	18 75	
		7,008 65
Deduct amount of sales of said coffee in its deteriorated state, per same document marked C	481 25	
		6,527 40
Expenses of appeal, &c., endeavoring to recover the brig Jane, per document marked D	956 62	
		7,484 02
Interest from 21st July, 1812—date of clearance of the brig Jane, at Laguayra—to the 7th January, 1822, is 9 years 5 months and 16 days, at 6 per cent. per annum,	4,248 42	
		11,732 44

The said Jonathan Jenks was sole owner of the said vessel, and a citizen of the United States of America, as more fully appears by the register deposited in the custom-house for the district of Pennsylvania, in consequence of her not returning to the United States.

On the 8th day of January, 1822, Jonathan Jenks filed his memorial before the commissioners for adjudicating the claims of our citizens against Spain for spoliations, &c., appointed by virtue of the treaty of February 22, 1819, between the United States and Spain, demanding indemnity for losses sustained by him in consequence of the seizure, detention, and final loss of his vessel and injury to her cargo, by the Spanish authorities, at Laguayra and Puerto Cabello. By the said treaty and commission, the government of the United States fully released and discharged the government of Spain from any and all liability on account of this claim, which had been recognised as just by the government authorities at Laguayra, and by so doing the United States became liable to pay the same, and assumed the liability with the promise to pay.

On the 22d day of January, 1822, Jonathan Jenks filed a supplemental memorial, stating, among other things, that he had disposed of his claim for indemnity in the matter of the Jane and her cargo to Hartshorn R. Thomas, and that the right to the said claim was then vested in Mary Thomas, his widow, and her children.

The Board of Commissioners, before whom these memorials were filed, examined them and the testimony adduced in support of the claim on the 18th November, 1823, and came to the conclusion, and so ordered, that the said claim *be allowed as valid against Spain* for the value of the vessel, for the necessary expenses incurred in defending the property, and for the loss sustained upon the cargo; but on the 1st of May, 1824, the said commissioners rescinded their previous decision, on the plea that the evidence was "not sufficient to establish the claim under the treaty."

Your petitioners allege that the commissioners clearly erred in not allowing the said claim, and that, too, without fault on the part of the claimants, whereby the government of the United States became liable to claimants in the said sum of $11,732 44; which said sum is now due and unjustly detained from your petitioners.

Your petitioners would represent, that on the 19th day of April, 1852, they memorialized the Congress of the United States for relief, and on the 26th day of January, 1854, the Committee of Claims in the House of Representatives made the report which is hereto annexed, and prayed to be taken as a part of this petition, accompanied by the following bill:

A BILL for the relief of Sarah K. Jenks and the legal representatives of Hartshorn R. Thomas, in the matter of the brig Jane.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Treasury be, and he is hereby, authorized and required to pay, out of any moneys in the treasury not otherwise appropriated, the sum of two thousand five hundred and three dollars to Sarah K. Jenks, the widow of Jonathan Jenks, deceased; and the sum of two thousand one hundred and seventy-nine dollars, in equal parts—share and share alike—to the legal representatives of Hartshorn R. Thomas, deceased, namely: the sum of seven hundred and twenty-six dollars and thirty-four cents to Louis G. Thomas; the like sum of seven hundred and twenty-six dollars and thirty-three cents to Edward K. Thomas; and the like sum of seven hundred and twenty-six dollars and thirty-three cents to Joseph Shermer, guardian of the children of Samuel W. Thomas, deceased—amounting in all to the sum of four thousand six hundred and eighty-two dollars; the said payments to be a discharge in full for all liability of the United States for the loss of the brig Jane and her cargo, seized and destroyed by the Spanish authorities at Laguayra in the year eighteen hundred and twelve.

On the 22d day of July the said bill was debated, and laid upon the table.

Your petitioners represent that they are the sole legal representatives of the said Hartshorn R. Thomas and Mary Thomas, both deceased, and as such are the sole owners of the said claim.

After due investigation and consideration in the premises, your petitioners pray your honorable court to frame and report to Congress a bill for their relief, appropriating to petitioners the said sum of $11,732 44. And, as in duty bound, your petitioners will ever pray, &c.

SNETHEN & EVANS,
Attorneys for Claimants.

I, Louis G. Thomas, do solemnly swear that the facts as set forth in the foregoing petition are just and true, to the best of my knowledge and belief, so help me God.

LOUIS G. THOMAS.

Sworn to and subscribed before me, the undersigned authority, on this 18th day of July, 1855.

THOS. DONOHO, *J. P.*

DEPARTMENT OF STATE,
Washington, November 20, 1855.

SIR: In compliance with your request, the record of the proceedings of the commissioners under the convention with Spain of 1819 has been examined, and it appears that the claim of Jonathan Jenks, growing out of the capture of the brig "Jane," was duly presented to the board of commissioners, and was disallowed.

The claim of Robert Roberts, growing out of the capture of the brig "Experiment," was presented to the same board of commissioners, and was disallowed.

The same claim was also presented to the board of commissioners appointed to carry into effect the treaty with France of 1831, and by that board was also disallowed.

The evidence of these decisions is derived from minutes on the dockets of the several boards of commissioners, but no document can be found in the case stating the principle on which the decision was founded.

I am, respectfully, your obedient servant,

J. A. THOMAS,
Assistant Secretary.

Hon. S. H. HUNTINGTON,
Clerk of Court of Claims, Washington.

LOUIS G. THOMAS and others
vs.
THE UNITED STATES.

Judge Blackford delivered the opinion of the Court, which is as follows:

This claim is founded on an alleged illegal seizure at Laguayra by the Spanish authorities in 1812 of the bring *Jane*, and on the treaty of 1819 between the United States and Spain.

The Court, considering the decision of the board of commissioners mentioned in the petition to be a very important feature in the case, made a request on the Secretary of State for information on the subject. The information furnished by the department relative to the decision of the board will be hereinafter noticed.

The only question in this case which we have found it necessary to examine is, whether the final decision of the board of commissioners (which decision is described in the petition) is a bar to the claim?

Previously to the treaty of the 22d of February, 1819, between the United States and Spain, which we shall presently notice more particularly, this claim for redress for the alleged illegal seizure and condemnation of the said brig by the Spanish authorities in South America could only have been preferred against the nation that had committed the injury, which nation was Spain, not the United States. Accordingly, we find that in 1813 and 1814 the captain of the brig endeavored, at Laguayra, to obtain satisfaction from the Spanish au-

thorities. But his endeavors being unsuccessful, he abandoned the pursuit, and returned to the United States. Nothing further appears to have been done as to the claim until after said treaty of 1819 between the United States and Spain for the cession of the Floridas. By the 9th article of that treaty all such claims of citizens of the United States against Spain as the claim described in the petition before us were renounced by the United States. The 11th article of said treaty, so far as it need be stated, is as follows: "The United States, exonerating Spain from all demands in future on account of the claims of their citizens, to which the renunciations herein contained extend, and considering them entirely cancelled, undertake to make satisfaction for the same to an amount not exceeding five millions of dollars. To ascertain the full amount and validity of those claims a commission, to consist of three commissioners, citizens of the United States, shall be appointed by the President, by and with the advice and consent of the Senate, which commission shall meet at the city of Washington, and, within the space of three years from the time of their first meeting, shall receive, examine, and decide upon the amount and validity of all the claims included within the descriptions above mentioned. The said commissioners shall take an oath or affirmation, to be entered on the record of their proceedings, for the faithful and diligent discharge of their duties; and, in case of the death, sickness, or necessary absence of any such commissioner, his place may be supplied by the appointment as aforesaid, or by the President of the United States, during the recess of the Senate, of another commissioner in his stead. The said commissioners shall be authorized to hear and examine, on oath, every question relative to the said claims, and to receive all suitable authentic testimony concerning the same. And the Spanish government shall furnish all such documents and elucidations as may be in their possession, for the adjustment of the said claims according to the principles of justice, the laws of nations, and the stipulations of the treaty between the two parties, of 27th October, 1795; the said documents to be specified, when demanded, at the instance of the said commissioners."—8 Stat. at Large, 260.

The commissioners, whose appointment was thus provided for, were afterwards appointed in conformity with the treaty; and in June, 1821, the board was organized in the city of Washington. In January, 1822, according to the petition, the said Jonathan Jenks, the original owner of the claim, filed his memorial before said commissioners, demanding indemnity for the losses sustained by him in consequence of the seizure, detention, and final loss of his vessel, and injury to her cargo, by the Spanish authorities at Laguayra and Puerto Cabello. The petition further states that the board of commissioners before which these memorials were filed "examined them, and the testimony adduced in support of the claim, on the 18th of November, 1823, and came to the conclusion, and so ordered, that the said claim be allowed as valid against Spain for the value of the vessel, for the necessary expenses incurred in defending the property, and for the loss sustained upon the cargo; but on the first of May, 1824, the said commissioners rescinded their previous decision, on the plea

that the evidence was not sufficient to establish the claim under the treaty." That is the language of the petition relative to the decision of the commissioners. The statement on the subject, to which we have referred, received from the State Department, is as follows: "The record of the proceedings of the commissioners under the convention with Spain of 1819 has been examined, and it appears that the claim of Jonathan Jenks, growing out of the capture of the brig *Jane*, was duly presented to the board of commissioners, and was disallowed." This statement from the department, after mentioning a decision of the board in another case, and also the decision of another board, says: "The evidence of these decisions is derived from the minutes on the dockets of the several boards of commissioners; but no document can be found in either case stating the principle on which the decision was made."

The objection of the petitioners to said decision of the board of commissioners against the claim is set out in the petition, and is as follows: "Your petitioners allege that the commissioners clearly erred in not allowing the said claim, and that, too, without fault on the part of the claimant or claimants, whereby the government of the United States became liable to the claimants in the said sum of $11,732 41, which sum is now due and unjustly detained from the petitioners."

The ground thus taken to avoid the decision of the board of commissioners is not tenable. The question whether the board erred or not, in their judgment in the case, is not for this court, or any other court, to determine. The decision of the board must be taken to be correct. The circumstance stated in the petition, that the board had in the first instance made an order in favor of the claim, is unimportant. The case remained, after that order, under the control of the board, to be finally disposed of as, upon further reflection or information, they might think proper.

The final decision of the board against the claim was rendered by a tribunal specially provided for by the treaty for the adjudication of such claims, to which tribunal the original claimant had submitted the case for decision, and from which decision there is no appeal given to any other tribunal. The judgment of the board stands upon the same ground with the judgment of any judicial tribunal of exclusive jurisdiction.

The nature and effect of a judgment of this same board of commissioners, under the same treaty with Spain of 1819, have been examined and settled by the Supreme Court of the United States. Judge Story, in delivering the opinion of the court, uses the following language: "The object of the treaty was to invest the commissioners with full power and authority to receive, examine, and decide upon the *amount* and *validity* of the asserted claims upon Spain for damages and injuries. Their decision, within the scope of this authority, is conclusive and final. If they pronounce the claim valid or invalid, if they ascertain the amount, their award in the premises is not re-examinable. The parties must abide by it, as the decree of a competent tribunal of exclusive jurisdiction. A rejected claim cannot be brought again under review in any judicial tribunal; an amount once fixed is a final

ascertainment of the damages or injury. This is the obvious purport of the language of the treaty."—Comegys *vs.* Vasse, 1 Peters' Rep., 193, 212.

We are of opinion, for the reasons above given and upon the authority cited, that said final decision of the board of commissioners, disallowing the claim now before us, is a complete bar to the present demand.

34th Congress, 1st Session. } HO. OF REPRESENTATIVES. { Report C. C. No. 8.

SHEPHERD KNAPP.

May 16, 1856.—Reported from the Court of Claims. Committed to a Committee of the Whole House, and ordered to be printed.

SHEPHERD KNAPP *vs.* THE UNITED STATES.

To the House of Representatives of the United States:

The undersigned, by direction of the Court of Claims, in pursuance of law, herewith respectfully transmits the following papers in the case above mentioned.

1. Petition of Shepherd Knapp.
2. Opinion of the Court.

The case was submitted by consent, without briefs.

[L. S.] SAMUEL H. HUNTINGTON,
Chief Clerk Court of Claims.

Washington, *March* 5, 1856.

SHEPHERD KNAPP *vs.* THE UNITED STATES.

To the Honorable the Judges of the Court of Claims:

The petition of Shepherd Knapp, of the city of New York, respectfully shows: That in the month of September, 1838, being then and ever since president of the Mechanics' Bank, in said city, he was duly appointed army and navy pension agent of the United States for said city of New York, and continued to hold said office, and to discharge the duties thereof, to the acceptance of the government in all respects, from thence to the 29th of January, 1842.

At the time of his said appointment, and during the five years next succeeding, no provision existed by law for the compensation of pension agents, or the payment of the expenses of pension agencies. Previous to, and up to the time of said appointment, Jacob Lorillard had been president of said bank and pension agent. The petitioner, on succeeding said Lorillard in those offices, found that a correspondence had then recently taken place between said Lorillard and the Secretary of War and the Commissioner of Pensions, in which said Lorillard declined to continue in said agency without compensation and payment of expenses, and urged his claim for such compensation and expenses, as well for past as future services. The Secretary and Commissioner fully admitted the justice of the claim; said that they were in constant expectation of provision being made by Congress for such payments, in compliance with recommendations they had made, and requested Mr. Lorillard to continue in said office, in

view of the expected compensation, and for the assistance and convenience of the government.

Under these circumstances the petitioner accepted the appointment of pension agent, upon succeeding Mr. Lorillard in the presidency of the bank, in the full belief that his compensation and expenses would be provided for by the government, as Mr. Lorillard had been assured, and upon no expectation or understanding whatever that he was to transact the business at his own expense and without compensation. In furtherance of this view, he continued the correspondence on the subject with the departments, which had been commenced by Mr. Lorillard, and expressly and repeatedly declined to continue in the discharge of the duties of the office unless the promised provision was made, but was induced to go on by the assurance from time to time of the departments that his compensation and expenses would be provided for. Beside the correspondence that took place, the petitioner went several times to Washington, and had personal interviews on the same subject with the Secretary of War and the Commissioner of Pensions, with the same result.

And the petitioner further shows, that the government deposits in said Mechanics' Bank, for the payment of pensions, were not at any time during the period for which compensation is now claimed sufficient to make it desirable for said bank, or for the petitioner as president thereof, to continue the payment of pensions without remuneration. On the contrary, owing to the depressed condition of the public finances which then existed, the government account at the bank was frequently and sometimes largely overdrawn, and advances were made by the bank at various times for the payment of pensions; while at other times the payment of pensions was necessarily suspended by the bank, on account of the want of deposits for that purpose. This deficiency in the deposits was a frequent source of embarrassment to the bank in the pressure which then prevailed in the money market, and the petitioner had frequently to exert his influence with the directors to induce them to continue longer the payment of pensions for the government upon the deposits furnished. And the petitioner further shows, that by act of Congress of February 20, 1847, provision was made for the compensation of pension agents thereafter, and the payment of their necessary expenses, in compliance with the recommendation of the departments above alluded to; and that under that provision his successor has received since that time the sum of one thousand dollars per annum as compensation for his services as pension agent; but the petitioner has never received any payment for his services, or for expenses incurred prior to that time.

And the petitioner further represents, that his services during that time were worth at least the sum of one thousand dollars per annum, being the amount his successor has since received for discharging the duties of the office under circumstances much less difficult. That a room was actually and necessarily occupied by him during that period at No. 33 Wall street, for the business of said agency, the rent of which was $700 per annum. That the services of three clerks were also required and furnished during the same period—one at $1,000, one at $500, and one at $300 per annum—the duties and accounts of the

agency, which is the largest in the United States, having been extensive and onerous.

The petitioner, therefore, claims that there was a legal as well as equitable contract on the part of the government to pay him for his services as pension agent what they were reasonably worth, and the expenses necessarily incurred in discharging the duties of this office, and that, in pursuance of such contract, his services were rendered and expenses paid; and prays to be allowed by the court the sum of five thousand dollars for five years' services, at one thousand dollars per annum, and the further sum of twelve thousand dollars for rent and clerks' hire, during the same period, at the rates aforesaid, together with the interest thereon since due, if allowable against the government. And that said allowance may be reported by the court to Congress, as provided by law.

And the petitioner further shows, that in the month of March, 1854, he presented a petition to Congress stating in substance the facts herein set forth, and asking for payment of his aforesaid claim.

That said petition was presented in the Senate, and was referred, with several similar petitions from other pension agents, to the Committee on Military Affairs; that on the 18th of April, 1854, said committee, by Hon. Mr. Shields, their chairman, made a report in regard to said claims in favor of paying the same, accompanied with a bill for that purpose, (copies of which are hereto annexed and referred to,) and that said bill failed to receive the final action of Congress.

Dated at New York, this 1st day of January, 1856.

JNO. J. LATTING,
Attorney for Petitioner.

S. KNAPP.

CITY AND COUNTY OF NEW YORK:

Shepherd Knapp, of said city, the claimant above named, being duly sworn, says, that the facts stated in the foregoing petition are true, to the best of his knowledge and belief.

S. KNAPP.

Sworn this 12th day of January, 1856, before me.

G. R. J. BOWDOIN,
Com'r Court of Claims.

Report and bill referred to in the foregoing petition.

IN THE SENATE OF THE UNITED STATES.

APRIL 18, 1854.

The Committee on Military Affairs, to whom were referred the petitions of Daniel Hay and others, having had the same under consideration, report:

The petitioners ask to be remunerated for their services as pension agents, prior to the 20th of February, 1849, and subsequent to the 20th of April, 1836.

It appears that upon the 20th of April, 1836, Congress repealed the law which authorized the bank of the United States to pay pensions, (*vide* Statutes at Large, vol. 5, page 16,) and at the same time enacted "That all such payments shall be hereafter made at such times and places, by such persons or corporations, and under such regulations, as the Secretary of War may direct; but no compensation or allowance shall be made to such persons or corporations for making such payments without authority of law."

Soon after the passage of this act, many of the pension agents tendered their resignations, which, however, they were induced to withdraw, with the assurance that Congress would speedily compensate them for their services. Numerous efforts were, from time to time, made to fix the compensation of these officers, but nothing was done in the matter until the 20th of February, 1847, when an act was passed allowing pension agents a commission of two per cent. upon their disbursements, provided the same should not exceed in any case the sum of one thousand dollars per annum. But this law had no retrospective effect; and in consequence of this omission, no compensation has been made to the pension agents who served during the whole or any part of the time from the 20th of April, 1836, to the 20th of February, 1847—nearly eleven years.

It is not to be presumed that these persons would serve as agents of the government—providing their own books and stationery, employing their own clerks, paying their own office rent, and, in many instances, advancing their own funds to pay the pensioners—unless they were induced to do so by the promise and expectation of adequate compensation. The Secretary of War and the Commissioner of Pensions, in their annual reports to the 1st session of the 26th Congress, and in their reports before and since, call the attention of Congress to the necessity and justice of making provision for the payment of these agents, and the committee think it only reasonable that they should be paid for services rendered under such circumstances.

And the committee, while examining this matter, although the subject has not been formally referred to them, have thought fit to consider the recommendation of the Commissioner of Pensions, made in his annual reports, (see S. Ex. Doc. No. 1, 33d Congress, 1st session, pp. 493–4,) in which he states that the present compensation to agents for paying pensions is not adequate to the services and responsibilities of some of these agents. With a view therefore of carrying out the recommendation of the department, and of properly remunerating a number of worthy individuals for services cheerfully and faithfully performed without compensation, but with the expectation and promise thereof, the committee have reported a bill to embrace the whole subject, and confidently recommend its passage.

IN THE SENATE OF THE UNITED STATES.

APRIL 18, 1854.

Mr. Shields, from the Committee on Military Affairs, submitted a report, (No. 218,) accompanied by the following bill, which was read and passed to a second reading:

A BILL making provision to compensate agents for paying pensions, and prescribing the time and manner of settling their accounts.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Interior be, and he is hereby, authorized and required to make suitable compensation to agents for paying pensions, but in no case shall such compensation exceed three per centum on the amount of moneys by such agent annually disbursed, and shall be paid out of the fund appropriated for the payment of revolutionary pensioners. Said compensation shall be in full for all services and contingent expenses of said agency, except for books, printing, and stationery: *Provided*, That the amount of compensation allowed to any one agent shall not exceed the sum of one thousand five hundred dollars a year.

SEC. 2. *And be it further enacted*, That each of said agents shall state his account quarterly, and transmit the same to the proper accounting officer of the treasury for settlement, and a duplicate thereof to the Commissioner of Pensions. He shall also transmit semi-annually to said Commissioner the names of all pensioners on the lists in his agency at the commencement of each half year to whom he was liable to make payments; also the names of such pensioners as have been inscribed on said lists, or transferred to his agency during said time, and shall designate the names of those he has paid, those who have died, those whose pensions have terminated, those who have not demanded their pensions for fourteen months, those who have been transferred to other agencies, and the names of the female pensioners who have married.

SEC. 3. *And be it further enacted*, That the Secretary of the Interior shall regulate the remittances of funds to said agents for the payment of pensioners in such manner and at such times as to prevent any accumulation of balances in their hands.

SEC. 4. *And be it further enacted*, That the provisions of the first section of this act be also extended to those persons who served as pension agents prior to the twentieth of February, eighteen hundred and forty-seven, and subsequent to the twentieth of April, eighteen hundred and thirty-six, when no compensation was provided by law for such services.

Opinion of the Court.

The opinion of the Court was delivered by Judge Scarburgh.

In the month of September, A. D. 1838, the petitioner was duly appointed army and navy pension agent of the United States, for the city of New York, and continued to hold that office till the 29th day of January, A. D. 1842.

At the time of his appointment, and for the next succeeding five years, no provision existed by law for the compensation of pension agents, or the payment of the expenses of pension agencies. His predecessor, in a correspondence which took place between him and the Secretary of War and the Commissioner of Pensions, recently before the petitioner succeeded him, had declined to continue in the agency without compensation and payment of expenses, and claimed such compensation as well for past as future services; but both the Secretary and the Commissioner of Pensions requested him to continue in office, and assured him that Congress would make provision for the payment of his claim.

The petitioner accepted the appointment of pension agent, in the full belief that his compensation and expenses would be provided for by the government, as his predecessor had been assured, and upon no expectation or understanding whatever that he was to transact the business at his own expense and without compensation. He continued the correspondence with the departments, which had been begun by his predecessor, and expressly and repeatedly declined to continue in the discharge of the duties of the office unless the promised provision was made, but was induced to go on by the assurance from time to time of the departments that his compensation and expenses would be provided for.

The petitioner alleges that a room was actually and necessarily occupied by him during his continuance in office, at No. 33 Wall street, for the business of his agency, the rent of which was $700 per annum. The services of three clerks were also required, and furnished during the same period—one at $1,000, one at $500, and one at $300 *per annum*—the duties and accounts of the agency, which is the largest in the United States, having been extensive and onerous.

The petitioner claims five thousand dollars for five years' services, at one thousand dollars *per annum*, and the further sum of twelve thousand dollars for rent and clerk's hire during the same period, at the rates above mentioned, together with interest thereon, if allowable against the government.

In the month of March, A. D. 1854, the petitioner presented a petition to Congress, asking for the payment of his claim. It was referred, with several similar petitions from other pension agents, to the Committee on Military Affairs. That committee, on the 18th day of April, A. D. 1854, made a favorable report, accompanied by a bill.

On the 20th day of April, A. D. 1836, the following act of Congress was passed: "That all laws and parts of laws authorizing or requiring the Bank of the United States, or its branches, to pay any pensions granted under the authority of the United States, shall be,

and the same are hereby, repealed; and such payments shall be hereafter made at such times and places, by such persons or corporations, and under such regulations, as the Secretary of War may direct; but no compensation or allowance shall be made to such persons or corporations, for making such payments, without authority of law."—(5 Stat. at Large, 16.) This act continued in full force till the 20th day of February, A. D. 1847, when the following act was passed: "That from and after the passage of this act the Secretary of War is hereby authorized to make such compensation to agents for paying pensions as may be just and reasonable, to be paid out of the fund appropriated for the payment of revolutionary pensions, but in no case to exceed two per centum on moneys disbursed by them; the said compensation to be in full for all their services, and any contingent expenses that may arise in the discharge of their official duties, books, printing and stationery excepted: *Provided*, That the amount of compensation allowed to any one pension agent shall not exceed one thousand dollars per annum: *And provided further*, That the Secretary of War shall so regulate the remittances made to pension agents as to prevent an undue accumulation of balances in their hands."—9 Stat. at Large, 127.

By the express terms of the act of February 20th, A. D. 1847, it is prospective only in its operation. The consequence is, that during the whole period for which the petitioner claims compensation for his services, there was an act of Congress in full force, which, in clear and unequivocal language, declared that "no compensation or allowance shall be made" to any pension agent "without authority of law." It was not, therefore, competent for the Secretary of War, at any time during that period, to make a contract binding on the United States for the compensation of any person whom he might appoint to pay pensions. Nor is it alleged by the petitioner that the Secretary of War did undertake to make any such contract. All that he did was to assure the petitioner that he should recommend the passage of a law providing for his compensation, and that his expectation was that such an act would be passed. The petitioner relied on this assurance, and acted upon it. But these circumstances are insufficient to constitute a contract, either express or implied, on the part of the United States, to make compensation to the petitioner for his services. So far from this being the case, the law then was that no compensation or allowance should be made to any person for paying pensions, without authority of law.—The United States *vs.* Joseph White *et al.*, in circuit court of Maryland. "Without authority of law" means, we think, without authority of an act of Congress; and the clear meaning of the statute was, that no compensation or allowance should be made to a pension agent until Congress should by law provide for it. The necessary result is, that those who acted as pension agents whilst that law was in force, must be regarded as having acted with the full knowledge that the law forbade the making of any compensation to them, and that the United States were under no *legal* obligation to compensate them.

This court, therefore, has no jurisdiction to grant relief to the petitioner.

But we entirely concur in the following remarks made by the Committee on Military Affairs in the Senate in the report to which we have already referred: "It is not to be presumed that these persons would serve as agents of the government—providing their own books and stationery, employing their own clerks, paying their own office rent, and in many instances advancing their own funds to pay the pensions—unless they were induced to do so by the promise and expectation of adequate compensation. The Secretary of War and the Commissioner of Pensions, in their annual reports to the first session of the twenty-sixth Congress, and in their reports before and since, call the attention of Congress to the necessity and justice of making provision for the payment of these agents, and the committee think it only reasonable that they should be paid for services rendered under such circumstances."

In addition to these considerations, we may be allowed to make this further suggestion. Whilst Congress, by the act of April 20, A. D. 1836, plainly designed to reserve, and did reserve, absolute control over this subject, still the reasonable inference from that act is, that it was the intention of Congress, if in its wisdom it should thereafter deem it proper, to authorize by law the compensation of the agents who might be appointed under that act. It manifestly contemplated the contingency that this might become proper and right. Whether it should be done or not, Congress clearly designed should depend upon circumstances to be subsequently developed, and upon its own discretion; for it is the obvious intention of the act of 1836 to protect the United States from any legal obligation to compensate those agents. Hence it was that the petitioner, and doubtless other pension agents, acted, and we think might reasonably have acted, under the impression that Congress would provide by law for the allowance of a fair and just compensation to them, or, in other words, that the authority of law for that purpose would be granted, if justice and right should require it. But whether this shall be done must depend entirely on Congress.

No order will be made authorizing testimony to be taken in this case.

34th CONGRESS, 1st Session. } HO. OF REPRESENTATIVES. { REPORT C. C. No. 9.

ASBURY DICKINS.

[To accompany bill H. R. C. C. No. 2.]

MAY 16, 1856.—Referred to the Committee of Claims.
MAY 23, 1856.—Ordered to be printed.

The COURT OF CLAIMS made the following

REPORT.

ASBURY DICKINS *vs.* THE UNITED STATES.

To the honorable the Senate and House of Representatives of the United States:

The Court of Claims respectfully submit the following report in the case of Asbury Dickins *vs.* The United States.

1. The petition of the claimant filed in this court.
2. The briefs of the claimant and the solicitor of the United States on the question of law arising on the petition.
3. The opinion of the court thereon.
4. The memorial of the claimant to Congress, and accompanying documents referred to the Court of Claims by the House of Representatives, March 3, 1855, attached to the report presented to the House.
5. The evidence submitted by the claimant also sent to the House of Representatives; a copy thereof sent to the Senate.
6. A statement showing the number of days Asbury Dickins served as acting Secretary of State, and the amount allowed therefor at the rate of $6,000 per annum; also the amount due him as chief clerk of the Treasury Department.
7. The opinion of the court on the facts.
8. A bill to carry the decision of the court into effect.

By order of the court.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court, at Washington, this 1st day of April, A. D. [L. S.] 1856.

SAM'L H. HUNTINGTON,
Chief Clerk Court of Claims.

To the honorable the Court of Claims:

The petition of Asbury Dickins respectfully showeth: That your petitioner held the office of chief clerk in the Treasury Department from the first day of April, eighteen hundred and twenty-nine, until the twenty-second day of August, eighteen hundred and thirty-three; and the office of chief clerk in the Department of State from the said twenty-second day of August, eighteen hundred and thirty-three, to the twelfth day of December, eighteen hundred and thirty-six.

That during the period your petitioner was chief clerk of the Treasury Department, he was, at various times, on occasion of the absence from the seat of government or sickness of the Secretary of the Treasury, authorized by the President of the United States, by appointments made under the eighth section of the act of Congress passed the eighth of May, seventeen hundred and ninety-two, entitled "An act making alterations in the Treasury and War Departments," to perform the duties of the office of Secretary of the Treasury until the absence of the head of that department from the seat of government, or his inability from sickness, had ceased. That during the period your petitioner held the office of chief clerk of the Department of State, he was also, at various times, under the provisions of the same law, appointed by the President to perform the duties of the office of the Secretary during the absence or sickness of the Secretary of State; and that your petitioner performed the duties of chief clerk and head of the department, in each of the said respective departments, during the times he held the office of acting Secretary of the Treasury and acting Secretary of State, respectively, under the appointments made by the President as aforesaid.

That schedule A, hereunto annexed, which your petitioner prays may be taken as part of this his petition, contains a correct statement of the times of his appointments and the number of days during which, in the absence or sickness of the Secretary of the Treasury and Secretary of State, respectively, your petitioner performed the duties of head of those departments, respectively; the period amounting in the whole to one hundred and thirty-three days during which he performed the duties of the office of Secretary of the Treasury, and two hundred and twenty-six days during which he performed the duties of the office of Secretary of State.

And your petitioner further shows, that he never received any compensation from the United States for the performance of the duties of said offices of Secretary of the Treasury and Secretary of State, as hereinbefore specified, except for the performance of the duty of Secretary of the Treasury from the twenty-first of June to the seventh of August, eighteen hundred and thirty-one; and during this last mentioned time he did not receive his salary as chief clerk in the Treasury Department, though he performed the duties of both offices. Your petitioner further shows, that his claim is for a reasonable compensation for services rendered to the United States under the laws thereof, by due authority from the President, for which he has never received any compensation. And your petitioner submits to this honorable court, that, though no payment could legally be made to him at the

treasury in compensation for his services rendered as acting Secretary of the Treasury and acting Secretary of State as aforesaid, without an appropriation by law, yet the performance of the duties of those offices temporarily, under legal and valid appointments for that purpose, (as the duties performed were not incompatible with his said office of chief clerk,) created an implied contract on the part of the United States to pay him a reasonable compensation for the services so rendered by him; and your petitioner is advised that the measure of reasonable compensation could not be less than a *pro rata* portion of the annual salary allowed by law to the Secretary of the Treasury and Secretary of State during the times your petitioner performed the duties of those offices, respectively.

And your petitioner further shows, that he first presented his claim for said services as acting Secretary of the Treasury and acting Secretary of State to the Treasury Department, in the year eighteen hundred and forty-nine, and that the account between your petitioner and the United States was examined and adjusted by the First Auditor on the eleventh day of August in that year, but has never, as your petitioner has been informed and believes, been acted upon officially by the First Comptroller, though your petitioner is informed and believes that the present Comptroller is opposed to the allowance of the account at the treasury. And your petitioner further shows that, in stating the said account, the Auditor omitted, for want of accurate information, some of the days and times during which your petitioner performed the duties of said offices of Secretary of the Treasury and Secretary of State as aforesaid.

Your petitioner has annexed to this petition, as part thereof, in the schedule marked B, the proceedings in the Treasury Department in reference to his said claim.

And your petitioner further shows, that, at the first session of the thirty-third Congress, your petitioner presented a petition for relief; and that a bill for his relief was reported in the Senate of the United States at that session by the Committee of Claims, and passed that body; and that during the same session, the said bill was reported favorably by the Committee of Claims of the House of Representatives, and placed upon the private calendar of the said House, and was, with other claims unacted upon, referred to this honorable court by a general order of the said House, made on the third day of March, eighteen hundred and fifty-five.

And your petitioner further shows, that, in his said petition to Congress, and in the said bill which passed the Senate, the relief asked by and granted to your petitioner was the *pro rata* share of the salary allowed by law to the offices of Secretary of the Treasury and Secretary of State during the times your petitioner performed the duties of those offices, respectively, deducting the amount received by him as chief clerk during the same times. But your petitioner is advised that the more correct measure of compensation would be the salary of both offices during the times he performed the duties of both; and that the same measures of compensation which would be applicable on the ground of implied contract on the part of the government to pay

for services rendered as acting Secretary of the Treasury or acting Secretary of State where the appointment was made under the law of a person holding no office, would be equally applicable where the appointment to perform the duties was made of a person holding another office, not incompatible with the performance of the duties of those offices.

And your petitioner further shows, that he is the sole owner of the claim he has presented, and that no other person has any interest therein.

Your petitioner, therefore, prays this honorable court that he may be allowed a reasonable compensation for services rendered to the United States, under authority of law, by due appointments by the President of the United States, on the implied contract on the part of the United States to pay for those services what they were reasonably worth, and also his salary as chief clerk during that portion of time when he was paid for his services as acting Secretary of the Treasury, but his salary as chief clerk was withheld, as hereinbefore stated.

ASBURY DICKINS.

WASHINGTON, *July* 6, 1855.

SCHEDULE A.

Statement of the dates at which Asbury Dickins was appointed to perform the duties of Secretary of the Treasury during the absence from the seat of government or sickness of the Secretary of the Treasury; and also the duties of the Secretary of State during the absence from the seat of government or sickness of the Secretary of State, and the periods during which he acted under each appointment.

1. AS ACTING SECRETARY OF THE TREASURY.

Date of appointment.	Duration of service under it.	Number of days.
April 24, 1829	To the 26th of May, 1829, inclusive	33
June 21, 1831	To the 7th of August, 1831, inclusive	48
October 18, 1831	To the 26th of October, 1831, inclusive	9
March 15, 1832	To the 30th of March, 1832, inclusive	16
October 1, 1832	To the 10th of October, 1832, inclusive	10
November 8, 1832	To the 17th of November, 1832, inclusive	10
May 6, 1833	To the 9th of May, 1833, inclusive	4
May 29, 1833	To the 31st of May, 1833, inclusive	3
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2. As Acting Secretary of State.

Date of appointment.	Duration of service under it.	Number of days.
August 10, 1833	To the 24th of August, 1833, inclusive	15
November 11, 1833	To the 15th of November, 1833, inclusive	5
October 11, 1834	To the 31st of October, 1834, inclusive	21
May 2, 1835	To the 13th of June, 1835, inclusive	43
July 6, 1835	To the 13th of July, 1835, inclusive	8
August 31, 1835	To the 8th of September, 1835, inclusive	9
September 28, 1835	To the 19th of October, 1835, inclusive	22
May 19, 1836	To the 23d of May, 1836, inclusive	5
July 7, 1836	To the 29th of August, 1836, inclusive	54
September 27, 1836	To the 9th of November, 1836, inclusive	44
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SCHEDULE B.

Treasury Department,
Comptroller's Office, May 26, 1855.

Dear Sir: In compliance with your verbal request, I herewith transmit to you copies of the papers on file in this office, relating to your claim for salary as acting Secretary of the Treasury during the years 1829, 1832, and 1833, and as acting Secretary of State during the years 1833, 1835, and 1836; also a statement of C. T. Jones, esq., acting Register of the Treasury, showing the days of said years on which warrants issued by the Treasury Department were signed by you as acting Secretary. And I state that I have not been able to discover upon the records or files of this office, or on the files of accounts revised by this office, any evidence of the Comptroller's having made a decision upon said claim.

Yours, respectfully,

J. M. RAMSEY,
Acting Comptroller.

Asbury Dickins, Esq.,
Secretary of the Senate.

Treasury Department,
Register's Office, August 10, 1849.

Sir: In reply to your letter of the 9th instant, I have to state that Asbury Dickins received his salary of $2,000 per annum, as chief clerk in the office of the Secretary of the Treasury, from the 24th of April, 1829, to the 31st of May, 1833, excepting from the 21st of June, 1831, to the 7th of August, 1831, inclusive; for which period he received salary as acting Secretary of the Treasury to the amount of $784 40; that from the 10th of August, 1833, to the 9th of November, 1836,

he received his salary as chief clerk in the office of the Secretary of State, and no other.

That John Robb received his salary as chief clerk in the office of the Secretary of War, at $2,000 per annum, from the 8th of June, 1832, to the 5th of August, 1833, and no other.

I am, respectfully, your obedient servant,

ALLEN A. HALL,
Register.

WILLIAM COLLINS, Esq.,
First Auditor.

COMPTROLLER'S OFFICE,
February 11, 1854.

This letter was found on William Anderson's desk, February 11, 1854. He could not find the original report of Auditor No. 101,509. The copy herewith certified by Auditor Smith was received February 11, 1854.

E. M. W.

THE UNITED STATES,
in account with ASBURY DICKINS, DR.

For his salary as acting Secretary of the Treasury, at the rate of $6,000 per annum, during the following periods, viz:

From April 24 to May 26, 1829, inclusive,	33	days	.....		$543 95
March 15 to Mar. 30, 1832,	16	"	.....		266 66
Oct. 1 to Oct. 10, 1832,	10	"	.....		163 04
Nov. 8 to Nov. 17, 1832,	10	"	.....		163 04
May 6 to May 8, 1833,	3	"	.....		49 44
May 29 to May 31, 1833,	3	"	.....		49 44
					1,235 57

For his salary as acting Secretary of State, viz:

From August 10 to August 24, 1833, inclusive, 13 days.....	$244 57	
From November 11 to November 15, 1833, inclusive, 5 days.....	81 52	
From August 31 to September 8, 1835, inclusive, 9 days.....	146 74	
From September 28 to October 19, 1835, inclusive, 22 days.....	358 70	
From May 19 to May 23, 1836, inclusive, 5 days	82 41	
From July 7 to August 27, 1836, inclusive, 52 days.....	847 83	
From September 27 to November 9, 1836, inclusive, 44 days.....	717 39	
		2,479 16

For salary as chief clerk in the Treasury Department from June 21 to August 7, 1831, not heretofore paid $261 46

3,976 19

FIRST AUDITOR'S OFFICE,
August 11, 1849.

The above account allowed in accordance with recent decisions of the First Comptroller of the Treasury, and approved by the Secretary.

E. T. MONTAGUE.

FEBRUARY 11, 1854.

The above I copied from paper sent by Mr. Dickins, to find decisions referred to in certificate of Montague.

E. M. WHITTLESEY, *Clerk.*

Correct copy.

JOHN Y. LAUB.

[No. 101,509.] TREASURY DEPARTMENT,
First Auditor's Office, August 11, 1849.

I hereby certify that I have examined and adjusted an account between the United States and Asbury Dickins, and find that the sum of three thousand nine hundred and seventy-six dollars and nineteen cents is due from the United States to the said Asbury Dickins for his salary as acting Secretary of the Treasury, acting Secretary of State, and chief clerk of the Treasury Department, under previous decisions of the First Comptroller of, and approved by the Secretary of the Treasury, as follows, viz:

For his salary as acting Secretary of the Treasury for various periods during the years 1829, '32, '33, per statement..... $1,235 57

For salary as acting Secretary of State for various periods during the years 1833, '35, '36, per statement..... 2,479 16

For salary as chief clerk of the Treasury Department from June 21 to August 7, 1831, not heretofore paid to him, per statement..... 261 46

3,976 19

as appears from the statement and vouchers transmitted for the decision of the Comptroller of the Treasury.

WM. COLLINS,
First Auditor.

$3,976 19.

To the FIRST COMPTROLLER OF THE TREASURY.

COMPTROLLER'S OFFICE.

I admit and certify the above balance this — day of ——.

—— ———, *Comptroller.*

To the REGISTER OF THE TREASURY.

I certify that the foregoing is a true copy from the records of this office.

T. L. SMITH,
Auditor.

IN THE COURT OF CLAIMS.

In the matter of the claim of ASBURY DICKINS. } Brief on behalf of the Petitioner.

The petitioner founds his claim upon services rendered to the United States as acting Secretary of State and acting Secretary of the Treasury, at various times between the 24th of April, 1829, and the 27th of September, 1836, under appointments made by the President of the United States, by authority of the 8th section of the act of May 8, 1792, entitled "An act making alterations in the Treasury and War Departments." (Statutes at Large, vol. I, p. 281.)

No fact stated in his petition is denied on the part of the government, and the evidence rests in its own archives. In the absence of any such denial, for the pupose of deciding on the rights of the petitioner, his statement must be assumed to be true, and the only difficulty is in presenting any *doubtful* question of law on which his right to the relief he asks can be controverted.

Upon principles of universal justice, and upon the settled and unquestionable rule of the common law, services rendered by one person to another, at his request, create a just claim to compensation against the party to whom the services have been rendered. A promise will always be implied, where services are rendered upon request by A to B, without agreement as to compensation, to pay what the services are worth, and an action of *indebitatus assumpsit* will lie against the party to whom the services have been rendered.

The first question which may be presented is, does any different principle obtain as to the right to compensation where the services are rendered to the State?

No distinction can be stated which justifies the application of a different principle; and it is submitted that no semblance of an authority in the shape of a judicial decision or dictum recognises any distinction.

Between individuals, where the agreement specifies the compensation as well as the service, the specific price is recoverable; and so in the case of the State, where the sum to be paid is specified in the law creating the office or authorizing the performance of the services, the legal as well as equitable obligation to pay exists. Undoubtedly, either in the case of a salary attached to a permanent or temporary

office, or of services rendered under the authority of law, where no specific compensation is provided by the law which authorizes the performances of the service, the *executive department*, in our form of government, could make no payment without an appropriation by the legislature; but the equity and right of the individual to compensation would exist, though the appropriation, from accident or neglect, or misapprehension, might not have been made; and the right would be the same whether the amount to be paid had been specified in the law in the shape of an annual salary or fees, or left indefinite and dependent upon the value of the services rendered. Where the salary is specified, and the appropriation made, the salary is the measure of compensation; and where the services are rendered, and an appropriation made generally for the compensation for such services, the *quantum meruit* is the only true and legal mode of payment. The only difference is, that, in the former case, no discretion is left with the executive department; but in the latter the discretion exists to adjust the compensation within the limits of the appropriation, upon the basis of value received by the government. As just a claim would exist against the State for the unpaid residue where the appropriation was insufficient to pay for the services what they were fairly worth, as where the appropriation was insufficient to pay the amount of a fixed salary. The obligation of the State, upon any recognised principles of law or equity, would be equally strong in both cases—in the one to pay the sum it had *expressly agreed* to pay, and in the other to pay what it had agreed to pay by *implied contract*; that is, a fair equivalent for the services rendered under its authority. It is true, that if the legislature refused to appropriate the requisite amount, the sovereign could not, under a well known rule of policy, be sued in his own courts; no payment could be *enforced*, and the claimant would be *legally* remediless. But in either case, whether the promise of the State was express to pay a fixed sum, or implied to pay what the service rendered at its request was worth, the right of the claimant would be equally violated by a refusal to appropriate, and the claim would remain valid in equity and justice. It is submitted that this court was constituted for the purpose of determining, upon principles of equity and justice, all claims founded upon *implied* contracts with the government of the United States, as well as those founded upon express contracts, and that, in the case of a State as well as in that of an individual, an *implied* contract is as imperative in its obligation as an *express* contract.

Secondly. It may, however, be contended that as the petitioner was chief clerk in the respective departments in which he performed the duties of head of the department by due appointment, at the time the services were performed, he is not entitled to payment for services so performed; though a person unconnected with the department, and performing the same services under the same authority, would have been entitled to compensation.

If this objection is presented, it can only be on the ground that the offices were incompatible; and if the objection is made, it rests with those who represent the government to show that incompatibility, and, consequently, the violation of law by the Executive in making the appointment. But there was no law which restricted the discretion of

the President in the selection of the individual who was to perform the duties of the office of Secretary of State or Secretary of the Treasury in case of the temporary inability of the regular head of the department, from absence or sickness, to perform them. The discretion of the President was absolute under the act of 1792 as to the person to be appointed; and the relations which necessarily exist between the chief clerk of a department and its head, peculiarly qualify him, in case of accidental temporary inability of the Secretary, to supply his place. It is one of those cases in which, to use the language of Chief Justice Taney, "it often happens that in unexpected contingencies, and for temporary purposes, the appointment of a person already in office to execute the duties of another office is more convenient and useful to the public, than to bring in a new officer to execute the duty." (U. S. *vs.* White *et al.*, C. C. U. S., Maryland District, per Taney, C. J., manuscript, pp. 3, 4.)

Indeed, the question is not worth an argument, as the intellect, or even the imagination, may be tasked in vain to point out any incompatibility in the duties of the chief clerk of a department which disqualifies him for the temporary performance of the duties of head of the department. The offices, however, are distinct, and the incumbent of the one is under no obligation to perform the duties of the other. The duties are essentially different, and a separate salary is by law attached to each. It was not as chief clerk that the petitioner performed the duties of head of the department. In the exercise of the discretion which the law specially authorized, the President invested him, though chief clerk, with a separate and independent office, and it was under that appointment and in that independent office he acted. Congress might, undoubtedly, have provided by law, that, in the event of the sickness or absence of the head of a department, the chief clerk should, *ex officio*, perform his duties. But Congress had made no such provision; and it no more devolved upon the chief clerk *virtute officii* to perform the duties of the office of Secretary of State in case of temporary disability of that officer, than it did upon the head of any other department or any other officer. Indeed, without an appointment by the President under the act of 1792, the chief clerk could not legally act as Secretary of State. It cannot, therefore, be objected to the claim of the petitioner that the performance of the duties for which he claims compensation was incident to his office of chief clerk.

It may possibly be contended, however, that since the passage of the acts of August 23, (Sec. 2,) and 26, (Sec. 12,) 1842, and that of March 3, (Sec. 4,) 1849, the chief clerk of a department performing the duties of acting Secretary of the department under the appointment of the President, would not be entitled to any other compensation than his own regular salary as chief clerk. This might be admitted without touching the merits of the present claim, as *all the services of the petitioner for which he claims compensation were performed previously to the passage of those acts.*

If, with a view to prevent personal favoritism, or the holding of sinecure offices, Congress has by those laws, or either of them, prohibited the allowance of any compensation to a clerk or other officer

in a department who performs the duties of any other officer in addition to his own, however wise such provisions may be for the future, they are not retrospective, and it would be gross injustice to give them *judicially* a retrospective operation.

It has been previously observed that it was no part of the petitioner's duty as chief clerk, nor could it, without express legal provision to that effect, be incident to his office of chief clerk, to perform, as such, the duties of head of department. It is not, therefore, any additional or extra pay as *chief clerk* that he claims, but the compensation justly due to him for performing the duties of a *separate and independent office*, to which he was appointed by the President by virtue of law. In support of the claim, he cites the following extract from an official opinion given by Mr. Wirt, Attorney General of the United States, on a claim of General Cass when governor of Michigan:

* * * "His salary is a compensation for his services as governor; but the services for which he claims do not belong to his duty as governor of the Michigan Territory, and having been employed by the government to perform these services, he has a fair claim for them on the principles of a *quantum meruit*. The facts conceded, his right, I think, is undeniable."—(Opinions Attorneys General, Vol. II, p. 189.)

The petitioner cites, also, the official opinion of another Attorney General, Mr. Legaré, who, in relation to a claim of Mr. Young, then chief clerk of the Treasury Department, for performing services exactly like those for which the petitioner claims, said: "In the matter of Mr. Young's claim, I am of opinion that the Secretary of the Treasury *ad interim*, appointed by virtue of an express law, has a claim upon the government for the usual, or, if there be no usual, for a reasonable compensation for his services in that capacity; but I do not think he can obtain it without an appropriation by Congress for the purpose. The act of 1839 is imperative to that effect."—(Opinions Attorneys General, Vol. IV, p. 122.)

This opinion of Attorney General Legaré covers the case of the petitioner. He admits the obligation upon the government to pay, but advises (what is conceded here) that the executive department could not pay a claim clearly valid without an appropriation. It is in this, as in other cases, the want of an appropriation, where a right exists, which calls for the interposition of the court.

It was decided by Judge Story, in the case of the United States *vs.* Morse, (Story's Reports, Vol. III, p. 87,) that two offices, not incompatible, may be conferred on one person, and that he will be entitled to the compensation of both. A similar decision was made by Chief Justice Taney in the case of the United States *vs.* White *et al.*, already referred to. In that case White, the defendant, had been regularly appointed navy agent, with a salary fixed by law. He was also appointed to discharge the duties *ad interim* of a purser in the navy, and performed the duties. His salary as acting purser was disallowed at the treasury under the acts of 1839 and 1842, because he was regularly in office as navy agent under a compensation fixed by law. The chief justice adjudged that he was entitled to both compensations. * * * "There is no law," said the chief justice,

"which prohibits a person from holding two offices at the same time." * * * "Indeed, it often happens that in unexpected contingencies, and for temporary purposes, the appointment of a person already in office to execute the duties of another office is more convenient and useful to the public than to bring in a new officer to execute the duty; and if the duties of the second office are performed, and the law has fixed the compensation which it deems just for such services, it cannot be material whether they are rendered by one holding another office or not, provided they are faithfully discharged."—(Manuscript Opinion, pp. 3 and 4.)

Though the petitioner held the office of chief clerk while, by the President's appointment, he performed the duties of the office of head of the department, he performed faithfully all the duties of chief clerk; and it may be well imagined that it was only by great exertions that he was able to perform, and did perform satisfactorily, the duties of both offices. It was justly said by Judge Story, in the case of the United States *vs.* Morse, already mentioned, that "the law adjusts, or intends to adjust, the measure of the compensation of every officer to the duties to be performed in that office, and not in another independent office."—(Story's Reports, Vol. III, page 89.) It will not be contended by any one that the humble compensation of chief clerk was, or was intended to be, *or ought to be*, any compensation for performing, in addition, the duties of the far more important office of head of the department. And if not, the petitioner has performed the duties of Secretary of State and Secretary of the Treasury *without compensation*. In the same case of the United States *vs.* Morse, where the court had to decide upon apparently conflicting statute provisions in relation to certain officers of the customs, which the treasury had construed to deny compensation for more than one office, Judge Story said that "where the provisions are loose or obscure, and admit of two interpretations, the construction ought to be favorable to the claims of the officer who performs the duties of two independent offices." This opinion of that wise and learned judge gives no countenance to the idea that the duties of a highly important and responsible office are to be performed *gratuitously* because they happen to be performed by a person who receives compensation for performing also the duties of another and inferior office.

In a late very elaborate opinion of the present Attorney General on the diplomatic and consular systems of the United States, (which opinion is sanctioned by the Secretary of State,) the law officer of the government recognises in the following passage, and states with great perspicuity, the leading principle upon which the petitioner is entitled to relief: "Besides which, an officer may lawfully be, and occasionally is appointed, either a statute officer or other, without any existing provision for his compensation; which, if he be lawfully appointed, creates a valid debt against the government."—(Pamphlet Opinion Attorney General Cushing, p. 30.)

The petitioner is not aware of any judicial decision or dictum which impugns the principles for which he has contended; and he submits to the court that, conceding the facts stated in his petition to be true, (and they are not denied,) both on principle and authority he is justly

entitled to compensation on the implied contract of the United States to pay him for the performance of the duties of the office of Secretary of State and Secretary of the Treasury during the times specified in his petition, his services having been rendered at the request of the government under appointments made by the President by virtue of the act of 1792.

The only question which remains is, the measure of compensation. The entire duties of the offices were performed by the petitioner while he was acting Secretary of State and of the Treasury under his several appointments; and it is respectfully submitted that, as these offices had a specific annual salary attached to them by law, the value of the services rendered in the discharge of their duties cannot, without questioning the estimated value as fixed by the legislative authority, be deemed less than a *pro rata* portion of the salary of the office as then established.

The evidence of the petitioner's services is contained in the accompanying certificates from the Departments of State and of the Treasury. The opinions of Chief Justice Taney and Attorney General Cushing also accompany this brief.

ASBURY DICKINS.

WASHINGTON, *October* 4, 1855.

IN THE COURT OF CLAIMS.—No. 30.

ON THE PETITION OF ASBURY DICKINS.

Brief of the United States Solicitor.

This is a claim for compensation for acting as Secretary of State and as Secretary of the Treasury, at various times during the absence or sickness of the Secretaries, and whilst petitioner was chief clerk in those departments.

It seems to be admitted, that since the acts of 1839 and of 23d and 26th August, 1842, a similar claim could not be sustained. The act of 1839, 5 Stat. 349, provides, "that no public officer in any branch of the public service, or any other person whose salary or whose pay or emoluments is or are fixed by law and regulations, shall receive any extra allowance or compensation in any form whatever for the disbursement of public money, or the performance of any other service, unless the said extra allowance or compensation be authorized by law."

The 12th section of the act of 26th August, 1842, (see page 525, vol. 5,) enacts, "that no allowance or compensation shall be made to any clerk or other officer by reason of the discharge of duties which belong to any other officer or clerk in the same or any other department; and no allowance or compensation shall be made for any extra service whatever which any clerk or other officer may be required to perform." But the act of 1818, chap. 87, p. 445, entitled "An act to regulate and fix the compensation of the clerks in the different offices,"

which was in force during the period for which compensation is now asked, is quite as explicit. After fixing the compensation for the chief clerks and others, it provides, in section 9, that "*no higher or other allowance* shall be made *to any clerk* in the said departments and offices than is authorized by this act."

It may be said that this provision is not equivalent to those in the acts of 1839 and 1842, and that the Supreme Court, on allowing similar claims when presented as offsets, has not noticed the act now quoted, and given it the force I contend for. I have not found it quoted for the United States, I admit, by the attorneys of the United States in those cases, but it is cited by Mr. Haywood in his report in Fillebrown's case. (See Senate Docs. 28th Cong. 1st sess., No. 213, vol. 4.)

The legislation of Congress which is reviewed in Hoyt's case, 10 Howard, 109, shows a constant effort (to use the language of the court) "to cut up by the roots these claims by public officers for extra compensation on the ground of extra services;" and a conflict of opinion has existed to some extent between the courts and Congress on the subject, as illustrated by the cases in which the courts have decided that the officers were entitled to extra compensation, but which Congress has steadily refused to pay.

I am not disposed to deny to the present claimant any just right. His long and faithful public service in many responsible positions is well known to every one familiar with public affairs. His qualifications for the positions he has held are shown by the remarkable fact that he has been retained at his different posts amidst all the political fluctuations we have witnessed in the last thirty years. But this circumstance, which is so honorable to his capacity and fidelity, illustrates the objection which I make to the claim, on the ground that the petitioner did not perform all the duties which belonged to the Secretaries whose desks he occupied temporarily. He was there merely to perform the routine duties of the office, but not as an adviser of the President in foreign and domestic policy. He was not probably engaged an hour longer in the day whilst Secretary *ad interim*, than as chief clerk. The real labor of the office was reserved to the Secretary when he should recover from sickness, perhaps caused by overtasking his faculties whilst at his desk, or return from his journey undertaken to recruit himself for his labors. He ought to be paid his salary certainly. Few have filled these positions who have not earned all that is allowed; and yet, if the court allows this claim, they ought not to have received it.

M. BLAIR.

ASBURY DICKINS *vs.* THE UNITED STATES.

The opinion of the court, delivered by Judge Blackford:

This is a claim for compensation for services performed by the claimant as acting Secretary of the Treasury, at different periods, between the 24th of April, 1829, and the 31st of May, 1833—both days inclu-

sive. It is also a claim for compensation for services performed as acting Secretary of State, at different periods, between the 10th of August, 1833, and the 9th of November, 1836—both days inclusive.

The petition, which is hereto attached, states that the claimant was appointed to said offices by the President of the United States, and rendered the services accordingly. It states, further, that during the times the claimant was acting as Secretary of the Treasury, he was also chief clerk in the Treasury Department; and, during the times he was acting as Secretary of State, he was chief clerk in the State Department.

The petition also states, that the claimant's appointments of acting Secretary of the Treasury were made on account of the absence from the seat of government, or sickness, of the Secretary of the Treasury; and that his appointments of acting Secretary of State were on account of the absence or sickness of the Secretary of State.

The objection to the claim, relied on in this case, is founded on the 9th section of the act of Congress of 1818, entitled "An act to regulate and fix the compensation of the clerks in the different offices." That section is as follows:

"SEC. 9. *And be it further enacted*, That the compensation allowed by this act to clerks, shall commence from and after the 31st day of March last. And it shall be the duty of the Secretaries for the Departments of State, Treasury, War and Navy, of the Commissioners of the Navy, and the Postmaster General, to report to Congress, at the beginning of each year, the names of the clerks they have employed, respectively, in the preceding year, together with the time each clerk was actually employed during the year, and the sums paid to each; and no higher or other allowance shall be made to any clerk in the said departments and offices than is authorized by this act. And all acts, and parts of acts, inconsistent with the provisions of this act, are hereby repealed." 3 Stat. at Large, 447.

The meaning of that part of the above section, relied on by the solicitor, is only this: That no such clerk, as there referred to, shall receive any other compensation, as clerk, than what the act allows. It does not affect the question, whether the claimant is not entitled, besides his salary as clerk, to a compensation, and, if any, to what amount, for his discharge of the duties of the other offices conferred on him.

The 8th section of the act of Congress referred to by the claimant, is as follows:

"SEC. 8. *And be it further enacted*, That in case of the death, absence from the seat of government, or sickness, of the Secretary of State, Secretary of the Treasury, or of the Secretary of the War Department, or of any officer of either of the said departments, whose appointment is not in the head thereof, whereby they cannot perform the duties of their said respective offices, it shall be lawful for the President of the United States, in case he shall think it necessary, to authorize any person or persons, at his discretion, to perform the duties of the said respective offices, until a successor be appointed, or until such absence, or inability by sickness, shall cease." 1 Stat. at Large, 281.

It was under that law that the claimant received from the President the appointments, authorizing him to perform the duties, respectively, of Secretary of the Treasury and of Secretary of State.

It appears to us that the petition shows that the claimant, at the times he performed the duties of Secretary of the Treasury, held an office separate from his office of chief clerk; and that he also held an office separate from that of chief clerk at the times he performed the duties of Secretary of State. He held two offices at those times; and there was no law to prohibit him from doing so. He discharged the duties of both offices, and must be entitled to compensation accordingly. He does not claim any pay beyond his salary as chief clerk, for extra services. His claim for compensation beyond his salary as chief clerk, is on account of his holding other offices at different times whilst he was chief clerk, and of his discharging the duties of such other offices.

The claim, we think, is well founded. There is the following decision on the subject, by the circuit court of the United States for the Maryland district. It was the case of a navy agent who had been appointed acting purser. Chief Justice Taney, in delivering the opinion of the court, uses the following language:

"But he is entitled to set off the sum of $5,328 08, for his salary as acting purser to the naval establishment at Annapolis. The Secretary of the Navy had a right to appoint a purser *ad interim*, usually called acting purser, to discharge the duties of purser at this establishment, if the demands of the public service elsewhere, or any other sufficient cause, put it out of his power to employ a purser regularly appointed. The court is bound to presume that the power, in this instance, was exercised under circumstances that justified the appointment of the defendant as acting purser. He performed all the duties of purser at the naval establishment, settled his accounts with the proper officer at Washington as such, and not as navy agent; and was recognised as acting purser in the reports to Congress concerning certain expenditures chargeable to that branch of the service. The act of Congress fixes the salary of purser, when not otherwise provided for, at $1,500 a year. As the defendant performed all the duties of the office, and performed them in the name and in the character of purser, he is entitled to the compensation which the law has provided for such services. The circumstance that he held the office of navy agent at the same time, can make no difference. There is no law which prohibits a person from holding two offices at the same time. As a matter of policy it would certainly be highly objectionable in most cases as a permanent arrangement; but in the absence of any legal provision to the contrary, this appointment was valid. Indeed, it often happens that in unexpected contingencies, and for temporary purposes, the appointment of a person already in office to execute the duties of another office, is more convenient and useful to the public than to bring in a new officer to execute the duty. And if the duties of the second office are performed, and the law has fixed the compensation which it deems just for such services, it cannot be material whether they are rendered by one holding another office or not, provided they

are faithfully discharged." The United States *vs.* White and others, April term, 1851.

That case is very similar to the one before us, and is, no doubt, correctly decided. It shows that the present claimant is entitled to receive for his services, as acting Secretary of the Treasury and as acting Secretary of State, the same compensation, for the time he acted, which the law then allowed to the Secretaries of the Treasury and of State, respectively.

The petition further states that, from the 21st of June to the 7th of August, 1831, the claimant received a compensation as Secretary of the Treasury; but that during that time, he did not receive his salary as chief clerk. The circumstance here stated will be taken into consideration, when an account shall be taken from the evidence, of the amount to which the claimant is entitled.

The solicitor refers us to certain acts of Congress of 1839 and 1842, (5 Stat. at Large, 349, 510, 525.) It is only necessary to observe, with respect to these acts, that they were not in force when the services now sued for were rendered.

Testimony is ordered to be taken in this case.

MEMORIAL, &c., REFERRED BY THE HOUSE OF REPRESENTATIVES.

To the Senate and House of Representatives of the United States of America in Congress assembled:

The memorial of Asbury Dickins respectfully showeth: That, during the time when General Jackson was President of the United States, your memorialist held successively the offices of chief clerk of the Treasury Department, and chief clerk of the Department of State; that while he held the former office, and when the head of the department was absent or sick, or otherwise unable to perform the duties of his office, your memorialist was appointed by President Jackson acting Secretary of the Treasury, and, in like manner, while he held the office of chief clerk of the Department of State, and when the head of that department was absent or sick, or otherwise unable to perform the duties of his office, your memorialist was appointed by President Jackson acting Secretary of State—such appointments being specially authorized by law; and that for the performance of the duties of these appointments your memorialist has received no compensation, except on one occasion where he acted in the absence of a gentleman (Mr. McLane) who had been appointed Secretary of the Treasury when out of the United States.

Your memorialist further states that, for the performance of similar duties, under similar circumstances, and under similar appointments, his successor, as chief clerk of the Treasury Department, (Mr. Young,) received a compensation equal to the salary of the head of the department, deducting therefrom the amount received by him as chief clerk; that this being the first occasion (as your memorialist be-

lieves) of such compensation being claimed by a chief clerk, the subject was carefully examined at the Treasury Department, and the allowance was made by the accounting officers (Mr. McCulloh being comptroller, and Mr. Collins auditor) with the deliberate sanction of the head of the department, (Mr. Walker;) and the like allowance was subsequently made to one of your memorialist's successors as chief clerk of the Department of State (Mr. Fletcher Webster) under similar circumstances; that your memorialist having, some time afterwards, heard of these allowances, and considering his claim to a like allowance to have been thus authoritatively settled, presented the same, with the proper vouchers, to the auditor, (Mr. Collins,) who allowed and passed it; but your memorialist, having understood that there was then no appropriation out of which it could be paid, did not urge it before the comptroller, (at that time Mr. Whittlesey,) and has since been informed that it was by him disallowed. It is under these circumstances that your memorialist submits the same to Congress.

The services for which your memorialist asks compensation were rendered under appointments from the President of the United States, made in virtue of the authority vested in him by the 8th section of an act of Congress, approved the 8th of May, 1792, which is in these words:

"SEC. 8. *And be it further enacted*, That in case of the death, absence from the seat of government, or sickness of the Secretary of State, Secretary of the Treasury, or of the Secretary of the War Department, or of any officer of either of the said departments whose appointment is not in the head thereof, whereby they cannot perform the duties of their respective offices, it shall be lawful for the President of the United States, in case he shall think it necessary, to authorize any person or persons, at his discretion, to perform the duties of the said respective offices until a successor be appointed, or until such absence or inability by sickness shall cease." (Little & Brown's Statutes of the United States, vol. 1, p. 281.) Though the law authorizing the appointment of persons to perform these duties is silent respecting the compensation to be allowed for them, it is believed that, upon the same principle on which services rendered for an individual at his request constitute a legal claim for compensation, services rendered for the State, *by its authority*, constitute an equitable claim. It was no part of your memorialist's duty as chief clerk to perform the duties of head of department; and if the President, in the exercise of that discretion which the law authorized him to exercise, saw proper to confide these duties to your memorialist, it is believed that their performance by him constitutes a claim to compensation on his part not less equitable than when performed by another.

In the consciousness of having faithfully performed these duties to the best of his ability, and in the belief that he is equitably entitled to compensation, your memorialist respectfully prays to be allowed the difference between the salary of chief clerk and that of head of a department, while he performed the duties of head of department by authority of the President; your memorialist having, at the same time, performed also the duties of chief clerk.

Your memorialist believes it is not unusual, in cases where an officer has been called to perform the duties of two offices, for him to be allowed the compensation of the highest; and in several instances where, in cases of vacancy, the head of a department has been appointed to take charge temporarily of another department, he has received the compensation of both; and the gentlemen who have done so are among the most eminent among the legal profession in the United States.

ASBURY DICKINS.

WASHINGTON, *February* 13, 1854.

IN THE SENATE OF THE UNITED STATES.—*February* 23, 1854.

Mr. BRODHEAD made the following report:

The Committee of Claims, to whom was referred the memorial of Asbury Dickins, have had the same under consideration, and report:

The memorialist, at different times, held the office of chief clerk of the Treasury and State Departments; during the time he held those offices he was, for limited periods, authorized to perform the duties of the respective heads of said departments by the President of the United States, in conformity with the eighth section of the act of May, 8, 1792, and he now asks that he may be allowed the salary legally attached to the offices, the duties of which he was thus required to perform, during the periods he actually performed such duties, after deducting the amount of his pay as chief clerk.

Although the act referred to makes it "lawful for the President of the United States, in case he shall think it necessary, to authorize any person or persons, at his discretion, to perform the duties of the said respective offices," it does not provide for any compensation for the service required. But it cannot be presumed that the government intended to require such services without adequate allowance; nor is it doubted that the performance of such services, when so required by the President, affords a legal as well as equitable claim to proper compensation. And as the principle here laid down and applicable to this case has been, as the committee think, fully recognised by Congress in numerous instances, they have unanimously agreed to report the accompanying bill, and recommend its passage.

The memorial, which contains a full statement of the case, is hereto annexed.

To the Senate and House of Representatives of the United States of America in Congress assembled:

The memorial of Asbury Dickins respectfully showeth: That, during the time when General Jackson was President of the United States,

your memorialist held, successively, the offices of chief clerk of the Treasury Department, and chief clerk of the Department of State; that while he held the former office, and when the head of the department was absent or sick, or otherwise unable to perform the duties of his office, your memorialist was appointed by President Jackson acting Secretary of the Treasury, and, in like manner, while he held the office of chief clerk of the Department of State, and when the head of that department was absent or sick, or otherwise unable to perform the duties of his office, your memorialist was appointed by President Jackson acting Secretary of State—such appointments being specially authorized by law; and that, for the performance of the duties of these appointments, your memorialist has received no compensation, except on one occasion where he acted in the absence of a gentleman, Mr. McLane, who had been appointed Secretary of the Treasury when out of the United States. Your memorialist further states that, for the performance of similar duties, under similar circumstances, and under similar appointments, his successor as chief clerk of the Treasury Department, Mr. Young, received a compensation equal to the salary of the head of the department, deducting therefrom the amount received by him as chief clerk; that this being the first occasion, as your memorialist believes, of such compensation being claimed by a chief clerk, the subject was carefully examined at the Treasury Department, and the allowance was made by the accounting officers, Mr. McCulloh being comptroller, and Mr. Collins auditor, with the deliberate sanction of the head of the department, Mr. Walker; and the like allowance was subsequently made to one of your memorialist's successors as chief clerk of the Department of State, Mr. Fletcher Webster, under similar circumstances; that your memorialist having, some time afterwards, heard of these allowances, and considering his claim to a like allowance to have been thus authoritatively settled, presented the same, with the proper vouchers, to the auditor, Mr. Collins, who allowed and passed it; but your memorialist, having understood that there was then no appropriation out of which it could be paid, did not urge it before the comptroller, at that time Mr. Whittlesey, and has since been informed that it was by him disallowed. It is under these circumstances that your memorialist submits the same to Congress.

The services for which your memorialist asks compensation were rendered under appointments from the President of the United States, made in virtue of the authority vested in him by the eighth section of an act of Congress, approved the 8th of May, 1792, which is in these words:

"SEC. 8. *And be it further enacted,* That in case of the death, absence from the seat of government, or sickness of the Secretary of State, Secretary of the Treasury, or of the Secretary of the War Department, or of any officer of either of the said departments whose appointment is not in the head thereof, whereby they cannot perform the duties of their respective offices, it shall be lawful for the President of the United States, in case he shall think it necessary, to authorize any person or persons, at his discretion, to perform the duties of the said respective offices until a successor be appointed, or until such absence

or inability by sickness shall cease." (Little & Brown's Statutes of the United States, vol. 1, p. 281.) Though the law authorizing the appointment of persons to perform these duties is silent respecting the compensation to be allowed for them, it is believed that, upon the same principle on which services rendered for an individual, at his request, constitute a legal claim for compensation, services rendered for the State, *by its authority*, constitute an equitable claim. It was no part of your memorialist's duty as chief clerk to perform the duties of head of department; and if the President, in the exercise of that discretion which the law authorized him to exercise, saw proper to confide those duties to your memorialist, it is believed that their performance by him constitutes a claim to compensation on his part not less equitable than when performed by another.

In the consciousness of having faithfully performed these duties to the best of his ability, and in the belief that he is equitably entitled to compensation, your memorialist respectfully prays to be allowed the difference between the salary of chief clerk and that of head of a department, while he performed the duties of head of department by authority of the President; your memorialist having, at the same time, performed also the duties of chief clerk.

Your memorialist believes it is not unusual, in cases where an officer has been called to perform the duties of two offices, for him to be allowed the compensation of the highest; and in several instances, where, in cases of vacancy, the head of a department has been appointed to take charge, temporarily, of another department, he has received the compensation of both; and the gentlemen who have done so are among the most eminent among the legal profession in the United States.

ASBURY DICKINS.

WASHINGTON, *February* 13, 1854.

Memorandum.—For allowances to Secretaries *ad interim* and acting Secretaries, see printed receipts and expenditures 1849: page 15, Monroe, Webster, Jones, Young; page 28, Mason, Nelson.

In previous years similar allowances were made Taney and Butler, and subsequently (it is believed) to Upshur.

TREASURY DEPARTMENT,
First Auditor's Office, April 7, 1854.

SIR: Your letter of the 6th instant, addressed to the Secretary of the Treasury, relative to the claim of Asbury Dickins, having been referred to this office, I beg leave to inform you that the amount of the claim is $3,976 19; made up of the following items:

For his salary as acting Secretary of the Treasury, for various periods during the year 1829, '32 and '33.....$1,235 57

For his salary as acting Secretary of State, for various periods during the years 1833, '35 and '36	$2,479 16
For his salary as chief clerk of the Treasury Department, from 21st June to 7th August, 1831	261 46
	3,976 19

Very respectfully, your obedient servant,

T. L. SMITH, *Auditor.*

Hon. J. LETCHER,
House of Representatives.

TREASURY DEPARTMENT,
Comptroller's Office, May 26, 1855.

DEAR SIR: In compliance with your verbal request, I herewith transmit to you copies of the papers on file in this office relating to your claim for salary as acting Secretary of the Treasury during the years 1829, 1832, and 1833, and as acting Secretary of State during the years 1833, 1835, and 1836; also a statement of C. T. Jones, esq., acting Register of the Treasury, showing the days, of said years, on which warrants issued by the Treasury Department were signed by you as acting Secretary. And I state, that I have not been able to discover upon the records or files of this office, or on the files of accounts revised by this office, any evidence of the Comptroller's having made a decision upon said claim.

Yours, respectfully,

J. M. RAMSEY,
Acting Comptroller.

ASBURY DICKINS, Esq.,
Secretary of the Senate.

AN ACT for the relief of Asbury Dickins.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the proper accounting officers of the Treasury Department be, and they are hereby, authorized and required to account with and allow to Asbury Dickins, late chief clerk in the Treasury Department and late chief clerk in the Department of State, forthe time he discharged the duties of Secretary of the Treasury Department or Secretary of the Department of State, by appointment from President Jackson, the same compensation as was then allowed by law to the heads of those departments, deducting therefrom the compensation received by the said Asbury Dickins, as chief clerk of either of those departments, during the same time—the same to be paid out of any money in the treasury not otherwise appropriated.

Passed the Senate March 10, 1854.

Attest:

ASBURY DICKINS,
Secretary.

EVIDENCE.

No. 1.—Certificate of Assistant Secretary of State, showing the several appointments of Asbury Dickins as acting Secretary of State.

DEPARTMENT OF STATE,
May 26, 1855.

I certify that it appears from the records of commissions in this department that Asbury Dickins, esq., was appointed to perform the duties of Secretary of State, during the absence of the Secretary of State, at the following dates:

Appointed on the 10th of August, 1833.
Appointed on the 11th of November, 1833.
Appointed on the 8th of July, 1834.
Appointed on the 11th of October, 1834.
Appointed on the 2d of May, 1835.
Appointed on the 6th of July, 1835.
Appointed on the 31st of August, 1835.
Appointed on the 28th September, 1835.
Appointed on the 19th of May, 1836.
Appointed on the 7th of July, 1836.

W. HUNTER,
Assistant Secretary of State.

No. 2.—Certificate of Assistant Secretary of State, showing to what time Asbury Dickins acted as Secretary of State under his several appointments.

DEPARTMENT OF STATE,
Washington, May 30, 1855.

I certify that it appears from the correspondence on record in this department that Asbury Dickins was acting Secretary of State—

On the 24th day of August, 1833.
On the 15th day of November, 1833.
On the 31st day of October, 1834.
On the 13th day of June, 1835.
On the 13th day of July, 1835.
On the 8th day of September, 1835.
On the 19th day of October, 1835.
On the 23d day of May, 1836.
On the 29th day of August, 1836.

And that it further appears that he was acting Secretary of State from September 27, 1836, to November 9, 1836.

W. HUNTER,
Assistant Secretary.

No. 3.—Certificate of Assistant Secretary of State, showing the several appointments of Asbury Dickins as acting Secretary of the Treasury.

DEPARTMENT OF STATE,
May 26, 1855.

I certify that it appears from the records of commissions in this department that Asbury Dickins, esq., was appointed to perform the duties of Secretary of the Treasury, during the absence of the Secretary of the Treasury, at the following dates:

Appointed on the 24th of April, 1829.
Appointed on the 21st of June, 1831.
Appointed on the 18th of October, 1831.
Appointed on the 17th of March, 1832.
Appointed on the 18th of July, 1832.
Appointed on the 8th of November, 1832.
Appointed on the 6th of May, 1833.
Appointed on the 29th of May, 1833.

W. HUNTER,
Assistant Secretary of State.

No. 4.—Certificate of the Register of the Treasury, showing to what time Asbury Dickins acted as Secretary of the Treasury under his several appointments.

Statement showing days upon which warrants issued by the Treasury Department were signed by Asbury Dickins, esq., as acting Secretary of the Treasury, as appears from the warrants on file in the Register's office.

Period of time.				No. of days.
April	25 to May	26, 1829,	inclusive	32
June	21 to August	6, 1831,	do.	47
October	18 to October	26, 1831,	do.	9
March	15 to March	30, 1832,	do.	16
October	1 to October	10, 1832,	do	10
November	8 to November	17, 1832,	do.	10
May	7 to May	9, 1833,	do.	3
May	29 to May	31, 1833,	do.	3
				130

TREASURY DEPARTMENT, *Register's Office, May* 30, 1855.

C. T. JONES, *Acting Register.*

Statement showing the number of days which Asbury Dickins served as acting Secretary of the Treasury, and as acting Secretary of State, and the amount allowed therefor at the rate of $6,000 per annum; also the amount due him as chief clerk of the Treasury Department.

AS ACTING SECRETARY OF THE TREASURY.

From 24th April to 26th May, 1829, inclusive, 33 days.....	$543 95
From 18th October to 26th October, 1831, inclusive, 9 days.....	146 74
From 15th March to 30th March, 1832, inclusive, 16 days,	263 73
From 1st October to 10th October, 1832, inclusive, 10 days,	163 04
From 8th November to 17th November, 1832, inclusive, 10 days.....	163 04
From 6th May to 9th May, 1833, inclusive, 4 days.....	65 93
From 29th May to 31st May, 1833, inclusive, 3 days.....	49 45
	1,395 88

AS ACTING SECRETARY OF STATE.

From 10th August to 24th August, 1833, inclusive, 15 days.....	$244 57
From 11th November to 15th November, 1833, inclusive, 5 days.....	81 52
From 11th October to 31st October, 1834, inclusive, 21 days.....	342 39
From 2d May to 13th June, 1835, inclusive, 43 days.....	708 79
From 6th July to 13th July, 1835, inclusive, 8 days.....	130 43
From 31st August to 8th September, 1835, inclusive, 9 days.....	146 74
From 28th September to 19th October, 1835, inclusive, 22 days.....	358 70
From 19th May to 23d May, 1836, inclusive, 5 days.....	82 41
From 7th July to 29th August, 1836, inclusive, 54 days..	880 43
From 27th September to 9th November, 1836, inclusive, 44 days.....	717 39
	3,693 37

AS CHIEF CLERK OF THE TREASURY DEPARTMENT.

From 21st June to 7th August, 1831.....	$261 46

From the foregoing statements it appears that there is due to Asbury Dickins—

For his salary as acting Secretary of the Treasury for various periods during the years 1829, 1831, 1832, and 1833.....	$1,395 88

For salary as acting Secretary of State for various periods during the years 1833, 1834, 1835, and 1836.....	$3,693 37
For salary as chief clerk of the Treasury Department, from 21st June to 7th August, 1831.....	261 46
	5,350 71

ASBURY DICKINS *vs.* THE UNITED STATES.

Judge Blackford delivered the opinion of the court on the facts.

The material facts established by the evidence are as follows:

During the absence of the Secretary of the Treasury, Asbury Dickins, the claimant, was appointed to discharge the duties of such Secretary, at various times between the 24th of April, 1829, and the 29th of May, 1833. He discharged those duties accordingly for eighty-five days.

And during the absence of the Secretary of State, the said Asbury Dickins was appointed to discharge the duties of such Secretary at various times between the 10th of August, 1833, and the 9th of November, 1836. He discharged those duties accordingly for two hundred and twenty-six days.

The said Asbury Dickins was chief clerk in the Treasury Department from the 21st of June, 1831, to the 7th of August, 1831—being forty-eight days.

According to these facts we consider Mr. Dickins entitled for said services, as acting Secretary of the Treasury, to the sum of one thousand three hundred and ninety-five dollars and eighty-eight cents; and for said services as acting Secretary of State, to the sum of three thousand six hundred and ninety-three dollars and thirty-seven cents; and for said services as chief clerk in the Treasury Department, the sum of two hundred and sixty-one dollars and forty-six cents.

The opinion hereto attached, delivered on the question as to the validity of the petition, shows the reasons for these allowances.

The testimony in the case, and a bill on the subject, accompany the report of this case.

34th CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES. { REPORT C. C. No. 10.

JAMES M. LINDSAY.

[To accompany bill H. R. C. C. No. 3.]

MAY 16, 1856.—Referred to the Committee of Claims.
MAY 23, 1856.—Ordered to be printed.

The COURT OF CLAIMS made the following

REPORT.

JAMES M. LINDSAY *vs.* THE UNITED STATES.

To the honorable the Senate and House of Representatives of the United States in Congress assembled:

The Court of Claims respectively presents the following report in the case of James M. Lindsay *vs.* The United States:

1. The petition of the claimant filed in the Court of Claims.
2. Memorial of claimant to Congress, with accompanying documents, referred by the House of Representatives to the Court of Claims—submitted as evidence; returned to that House.
3. Other evidence submitted by claimant.
4. Opinion of the court.
5. Bill to carry the decision of the court into effect.

By order of the court.

In testimony whereof, I have hereunto set my hand and affixed the [L. S.] seal of said court at Washington, this 1st day of April, A. D. 1856.

SAM'L H. HUNTINGTON,
Chief Clerk Court of Claims.

To the Honorable the Judges of the Court of Claims:

Your petitioner, James M. Lindsay, of the State of Alabama, shows unto your honors, that under the provisions of the first article of the treaty of August 9, 1814, between the United States and the hostile Creek Indians, Samuel and David Hale, chiefs of said tribe, obtained a cession of land known as fractional section 21, township 6, range 5, west of Alabama river; that they continued to hold and possess the said premises until some time in the year 1826, when, for a fair and valuable consideration, they sold the same to one Adam Carson, assigning as a title to the same their certificate of reservation; that in 1840 the said premises were levied on as the property of said Car-

son, and sold under a judgment rendered in said State against him by the sheriff of ——— county to the Hon. Lyman Gibbons, late one of the justices of the supreme court of said State, saving and excepting 160 acres on the south side of said location; that the said Gibbons subsequently sold and conveyed said premises to one Henry Center, who, having owned it for some time, died in the undisputed and undisturbed possession of the same, leaving Edward Center his devisee and executor of his will; and that the said Edward has sold and conveyed the same to your petitioner; all of which will fully appear by reference to certified transcripts of the conveyances thereof on file in this honorable court.

Your petitioner alleges that neither the possession nor title of the various grantees have been challenged by any one; but that, being desirous of perfecting his title under the government, he presented his petition to the House of Representatives of the last Congress, praying for a confirmation of his title; that the Committee on Private Land Claims made a favorable report thereon, accompanied with a bill for his relief, on the 23d of February, 1855, (Report No. 103, Bill No. 766;) but the said bill was not finally acted on, and the claim of your petitioner was referred by resolution of the House to your honorable court, which now has jurisdiction thereof.

Your petitioner, therefore, prays that his claim be allowed by the judgment of this court, and that a bill confirming his title to said lands be prepared and submitted to Congress for its approval.

P. PHILLIPS,
Solicitor for James M. Lindsay.

To the honorable the Senate and House of Representatives of the United States of America in Congress assembled:

Your petitioner, James M. Lindsay, of the county of Monroe, in the State of Alabama, humbly represents to your honorable body, that he is in the actual occupation of the following described tract of land, viz: Fractional section twenty-one (21), in township six (6), range five (5), west of the Alabama river, except the south half of the southeast quarter (¼) and the south half of the southwest quarter (¼) of said section, containing four hundred and eighty acres, more or less; that said tract of land is embraced in the reservations granted to David and Samuel Hale, Indian reservees, under the treaty made and concluded at Fort Jackson, on the 9th of August, 1814; that said reservees, David and Samuel Hale, sold and conveyed (by the transfer of the certificates of reservation, as your petitioner is informed and believes) the said lands to one Adam Carson, then a citizen of Monroe county, in the State of Alabama, but who is since dead; that said land was sold as the property of said Carson by the sheriff of Clarke county, in the State of Alabama, in which county the said land lies, to one Lyman Gibbons, who sold and conveyed the same to one Henry Center, and Edward C. Center, the sole heir and executor of the said Henry Center, sold and conveyed the same to your petitioner; all of

which facts relative to the conveyance of said land will more fully appear by the transcript copies of the deeds hereunto attached.

Your petitioner shows, that at the time the said Carson purchased said lands from the said Hales—to wit: about the year 1826—he purchased believing that he purchased a good and perfect title in fee simple to said lands, and the said Hales sold their right to him under the impression that they had the right to sell and convey a perfect title to the same; that a fair and full consideration was paid for said lands to said Hales, and the transaction was in all respects a fair and *bona fide* transaction, and in no respect covinous or colorable, as will more fully appear by the affidavits of James Daniel, Isaac Thompson, and Andrew Vernon, respectable citizens of Monroe county, which affidavits are hereto attached, and to which reference is prayed as a part of this petition; that said Carson went into the immediate possession of said lands under said purchase from said Hales, and peaceably occupied the same up to the time that they were sold by the sheriff of Clarke county, as above stated, a period of upwards of ten years; that said Carson afterwards moved to the State of Mississippi, where he afterwards died; and, after diligent search and inquiry, your petitioner has been unable to obtain the original certificates granted to the said Hales, and transferred, as above stated, to said Carson.

Your petitioner further shows, that all the purchasers of said land, as he is informed and fully believes, took the title, believing the same to be perfect and undoubted, and in every instance paid the full value of the said lands; that your petitioner purchased under the belief that his title was derived from the United States, and was not aware that the United States had, or could have, any right or claim to said lands; that he paid the full value of said lands, believing that the title was undoubted.

Your petitioner further shows, that he is informed that the courts of the country have decided, where an Indian reservee sells and conveys away the lands ceded to him by the treaty above mentioned, it is construed to be an abandonment by the reservee, and the title reverts, *ipso facto*, to the United States. Of these decisions your petitioner was unaware at the time he made the purchase, and has every reason to believe that every purchaser, from Carson down to your petitioner, was equally unaware.

Your petitioner would further show, that in 1849, the Congress of the United States passed an act in favor of James Daniel and Stephen Steele, ceding to them the rights of the United States to certain lands under precisely the same circumstances; a copy of which said act is hereunto appended, and to which reference is also prayed.

Your petitioner, therefore, humbly prays your honorable body, in view of the premises, to grant to your petitioner an act ceding to him the rights of the United States (if such they have) to said lands in the same or similar manner that the title of the said Daniel and the said Steele was confirmed by the act aforesaid; and your petitioner, as in duty bound, will ever pray, &c.

JAMES M. LINDSAY.

THE STATE OF ALABAMA, *Monroe County:*

Personally appeared before me, Robert D. Thompson, a justice of the peace in and for the county of Monroe, Andrew Ormon, who being duly sworn, deposeth and saith, that about the year 1826, Adam Carson, then a resident of Monroe county, and well known to this deponent, purchased of David and Samuel Hale, Indian reservees under the treaty of Fort Jackson, made and concluded the 9th day of August, A. D. 1814, the following described tract of land, being then reservations under said treaty, viz: fractional section twenty-one (21), in township six (6), range five (5), west of the Alabama river, except the south half of the southeast quarter, and the south half of the southwest quarter of said section, containing four hundred and eighty acres, more or less. That said Hales were well known to this deponent. That the purchase was made for the consideration of one thousand dollars, which was then a full and fair price for said land; that the money was honestly paid by said Carson, and the transaction was in all respects an honest *bona fide* transaction, the vendors believing that they had the right to sell and make a good title, and the vendee believing that he purchased a good and perfect title to the land. That after the said sale, and after the money was paid as aforesaid, all the parties were entirely satisfied with it.

A. ORMON.

Subscribed and sworn to before me, this 25th day of October, A. D. 1854.

R. D. THOMPSON, *J. P.*

THE STATE OF ALABAMA, *Monroe County:*

Personally appeared before me, Robert D. Thompson, a justice of the peace in and for the county of Monroe, Isaac Thompson, who being duly sworn, deposeth and saith, that about the year 1826, Adam Carson, then a resident citizen of Monroe county, and to this deponent well known, purchased from David and Samuel Hale, Indian reservees, and to this deponent also well known, the following described lands, to wit: fractional section twenty-one (21), in township six (6), range five (5), west of the Alabama river, except the south half of the southeast quarter, and the south half of the southwest quarter of the said section, containing four hundred and eighty acres, more or less. That said lands so sold were the vendors' Indian reservations under the treaty of Fort Jackson, made and concluded on the 9th day of August, A. D. 1814. That the consideration for said purchase was one thousand dollars, then a full and fair price for said lands. That the transaction between the said Carson and said Hales was, as this deponent fully believes, an honest, fair, and *bona fide* transaction, and the parties thereto were mutually satisfied with it after the same was concluded, and were never otherwise within the knowledge or hearing of this deponent.

ISAAC THOMPSON.

Subscribed and sworn to before me, this the 25th day of October, A. D. 1854.

ROBT. D. THOMPSON, *J. P.*

THE STATE OF ALABAMA, *Monroe County:*

Personally appeared before me, Robert D. Thompson, a justice of the peace, in and for the county of Monroe, James Daniel, who being duly sworn, deposeth and saith, that in the year 1826, or about that time, Adam Carson, then a citizen of Monroe county, and well known to deponent, purchased from David Hale and Samuel Hale, Indian reservees under the treaty made and concluded at Fort Jackson on the 9th day of August, A. D. 1814, and also well known to deponent, the following described tract or parcel of land, their reservations under said treaty, viz: fractional section twenty-one (21), in township six (6), range five (5), west of the Alabama river, except the south half of the southeast quarter, and the south half of the southwest quarter of the said section, containing four hundred and eighty acres, more or less. That said purchase was made for the consideration of one thousand dollars, which was then a fair price for the land. That said land was offered to this deponent about that time by the said Hales for the same price, but deponent refused to make the purchase. That deponent has every reason to believe that the money was honestly paid by said Carson to said Hales, and that the transaction was in all respects fair, honest, and *bona fide* between the parties, as both parties, within the knowledge of this deponent, were entirely satisfied with it after its conclusion.

JAMES DANIEL.

Subscribed and sworn to before me, this the 23d day of October, A. D. 1854.

R. D. THOMPSON, *J. P.*

Robert B. Patterson, sheriff, to Lyman Gibbons.—Deed.

To all to whom these presents shall come, I, Robert B. Patterson, sheriff of Clarke county, send greeting:

Whereas, by one writ of execution issued out of the circuit court of the county of Monroe, in the State of Alabama, to me directed and delivered, tested the second day of April, in the year of our Lord one thousand eight hundred and forty, I was commanded to make of the goods and chattels, lands and tenements of Adam Carson, in my county, the sum of three thousand three hundred and thirty-eight dollars and fifty-eight cents, which Archibald Brown hath recovered against him in the said court for his damages which he had sustained, as well by reason of the non-performance of certain promises, as for his cost and charges; and that if sufficient goods and chattels could not be found, that then I should cause the said damages to be made of the lands and tenements whereof the said Adam Carson was seized,

on the thirtieth day of September, in the year 1839, or at any time afterwards, in whose hands soever the same might be, as by the said writ of execution, reference being thereunto had, more fully appears: And whereas, after the coming of the said writ to me, and before the day of the return thereof, I did, by virtue of the said writ, seize and take the lands hereinafter particularly described, and have, for want of goods and chattels in my county of the said Adam Carson, to satisfy the said damages, sold the said lands as is hereinafter mentioned at public auction, according to the statute in such cases made and provided, to Lyman Gibbons, for the sum of three thousand two hundred dollars, being the highest sum bid for the same:

Now know ye, that I, the said Robert B. Patterson, the sheriff aforesaid, by virtue of the writ of execution, and of the statute in such cases made and provided, in consideration of the sum of three thousand two hundred dollars, to be in hand paid by the said Lyman Gibbons, the receipt whereof is hereby acknowledged, have granted, bargained, and sold, and by these presents do grant, bargain, and sell unto the said Lyman Gibbons, and to his heirs and assigns forever, all those pieces, parcels, or tracts of land situate and described as follows, to wit: fractional section (21), township six (6), range five (5), west of the Alabama river, except the south half of the southeast fourth, and the south half of the southwest fourth of the said section, containing four hundred and eighty acres, more or less. Also the right, title, and interest of Adam Carson to fractional section No. 22, in the same township and range, as above described, land west of the Alabama river, and adjoining the above lands on the east, and bounded on the east by the Alabama river, containing twenty acres, more or less, with its appurtenances, and all the estate, right, title, and interest, which the said Adam Carson had in the said tract, piece, and parcel of land on the said thirtieth day of September, in the year 1839, or at any time since had, or now hath. To have and to hold the said lands and premises, and every part thereof, with the appurtenances, unto the said Lyman Gibbons, his heirs and assigns forever, as fully and absolutely as I, the said Robert B. Patterson, as sheriff aforesaid, and under the authority aforesaid, might, could, or ought to sell and convey the same.

In witness whereof, I have hereunto set my hand and affixed my seal, the sixth day of July, in the year of our Lord one thousand eight hundred and forty.

[L. S.] RO. B. PATTERSON, *Sheriff.*

THE STATE OF ALABAMA, *Clarke County:*

Personally appeared before me, Terrell Powers, clerk of the county court of the State and county aforesaid, the within Robert B. Patterson, sheriff of the county of Clarke, who acknowledged that he, as sheriff as aforesaid, signed, sealed, and delivered the foregoing deed to Lyman Gibbons, on the day and year therein mentioned.

Given under my hand and seal at office, this 6th day of July, 1840.

TERRELL POWERS, *Clerk.*

Recorded 6th day of October, 1840.

T. POWERS, *Clerk.*

THE STATE OF ALABAMA, *Clarke County*:

I, H. W. Coate, judge of the probate court of said county of Clarke, Alabama, hereby certify that the foregoing contains a correct copy of a deed from Robert B. Patterson, as sheriff of Clarke county, Alabama, to Lyman Gibbons, as taken from the records on file in my office.

Given under my hand and seal of the court at office, this 1st day of November, A. D. 1854.

[L. S.]

H. W. COATE,
Judge of Probate Court, Clarke county, and ex officio Clerk.

Lyman Gibbons to Henly Center.—Deed.

To all people to whom these presents shall come, greeting:

Know ye that Lyman Gibbons, of the city and county of Mobile, in the State of Alabama, for and in consideration of the sum of three thousand dollars, lawful money of the United States of America, to me in hand paid by Henly Center, of the same place aforesaid, at or before the sealing and delivering of these presents, the receipt whereof is hereby acknowledged, hath remised, released, and forever quit-claimed, and by these presents doth remise, release, and forever quit-claim unto the said Henly Center, in his full and actual possession, now being, and to his heirs and assigns forever, all the estate, right, title, interest, use, trust, property, claim, and demand whatsoever, at law as well as in equity, in possession as well as in expectancy, of, in, to, or out of all and singular the pieces, parcels, or tracts of land situate, lying, and being in the county of Clarke, in the State of Alabama, and described as follows, to wit: fractional section No. (21) twenty-one, in township (6) six, range (5) five, west of the Alabama river, except the south half of the southeast fourth, and the south half of the southwest fourth of said section, containing four hundred and eighty acres, more or less; also fractional section number twenty-two, in the same township and range as the above-described lands, west of the Alabama river, and adjoining the above-described lands on the east, and bounded on the east by the Alabama river, being the same identical land conveyed by Robert B. Patterson, sheriff of Clark county, to Lyman Gibbons, by deed dated the 6th day of July, A. D. 1840, and recorded in Book C, in Clarke county, page 423, as by reference to the same will appear. To have and to hold the said released premises unto the said Henly Center, his heirs and assigns, to his own proper use, benefit, and behoof forever, so that neither the said Lyman Gibbons, his heirs or assigns, nor any other person or persons in trust for him, or in his name or names, or in the name, right, or stead of any of them, shall or will, can or may, by any ways or means whatsoever, hereafter have, claim, challenge, or demand any right, title, interest, or estate of, into, or out of the said premises above described and hereby released; but that the said Lyman Gibbons, his heirs and assigns, each and every of them, from all estate, right, title, interest, property, claim, or demand whatso-

ever, of, in, to, or out of the said premises, or any part thereof, are, is, or shall be by these presents forever excluded and debarred.

In witness whereof, the said Lyman Gibbons has hereunto set his hand and seal this the fifth day of June, in the year of our Lord one thousand eight hundred and forty one.

Signed, sealed, and delivered in presence of—

LYMAN GIBBONS. [L. S.]

THE STATE OF ALABAMA, *Mobile County:*

Be it remembered that the within named Lyman Gibbons, of Mobile county, State of Alabama, appeared personally before me, Charles A. Marston, notary public, in and for said county, and acknowledged that he signed, sealed, and delivered the within deed of quit-claim to Henly Center on the day and year, and for the uses and purposes, therein mentioned.

Given under my hand seal notarial, this seventh day of June, 1841.

CHARLES A. MARSTON,
Notary Public.

Received in office for record 14th day of June, 1841. Recorded the 30th day of July, 1841, in Book C, pages 527, 528.

TERRELL POWERS, *Clerk.*

THE STATE OF ALABAMA, *Clarke County:*

I, H. W. Coate, judge of the probate court of said county of Clarke, Alabama, hereby certify that the foregoing contains a correct copy of a deed of quit-claim from Lyman Gibbons to Henly Center, as taken from the records on file in my office.

Given under my hand and seal of the court at office, this first day [L. S.] of November, A. D. 1854.

H. W. COATE,
Judge Probate Court Clarke County, Ala., and ex officio Clerk.

E. C. Centre to James M. Lindsay.—Deed.

To all people to whom these presents shall come, greeting:

Know ye that Edward C. Center and E. M. Center, his wife, of the city, county, and State of New York, for and in consideration of the sum of two thousand dollars, lawful money of the United States of America, to them in hand paid by James M. Lindsay, of the county of Monroe, in the State of Alabama, at or before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, have remised, released, and forever quit-claimed, and by these presents do remise, release, and forever quit-claim unto the said James M. Lindsay, in his full and actual possession now being, to his heirs and assigns forever, all the estate, right, title, interest, use, trust, property, claim, and demand, whatsoever at law, as well as in equity, in possession as well as in expectancy, of, in, to, or out of, all and

singular those pieces, parcels, or tracts of land situate, lying, and being in the county of Clarke, in the State of Alabama, and described as follows, to wit: fractional section number (21) twenty-one, in township (6) six, range (5) five, west of the Alabama river, except the south half of the southeast fourth, and the south half of the southwest fourth of said section, containing four hundred and eighty acres, more or less; also fractional section number (22) twenty-two, in the same township and range as the above-described lands west of the Alabama river, and adjoining the above-described lands on the east, and bounded on the east by the Alabama river, being the same identical lands conveyed by Robert B. Patterson, sheriff of Clarke county, to Lyman Gibbons, by deed dated the 6th day of July, A. D. 1840, and recorded in Book C, in Clarke county, page 423, as by reference to the same will appear. To have and to hold the said released premises unto the said James M. Lindsay, his heirs and assigns, to their own proper use, benefit, and behoof forever, so that neither the said Edward C. Center, nor his heirs or assigns, nor any other person or persons in trust for them, or in their name or names, or in the name, right, or stead of any of them, shall or will, can or may, by any ways or means whatever, hereafter have, claim, challenge, or demand any right, title, interest, or estate of, in, to, or out of the said premises above described and hereby released; but that the said E. Center, and the said E. M. Center, wife of the said Edward C., their heirs and assigns, each and every of them, from all estate, right, title, interest, property, claim, and demand whatsoever, of, in, to, or out of the said premises, or any part thereof, are, is, or shall be by these presents forever excluded and debarred; and the said Edward C. Center, for himself and his heirs, hereby covenant with the said James M. Lindsay, his heirs and assigns, that he has good right to convey the abovementioned and described premises, and that the same are free from all incumbrances done or suffered by him.

In witness whereof, the said Edward C. Center, and said E. M., his wife, have hereunto set their hands and seals this first day of October, in the year of our Lord one thousand eight hundred and fifty.

EDWARD CENTER. [SEAL.]
E. MARY CENTER. [SEAL.]

Signed, sealed, and delivered in presence of—
J. G. HIEM,
JOSEPH C. LAWRENCE.

THE STATE OF NEW YORK, }
City and County. } *ss.*

Be it remembered that the within named Edward C. Center, on the first day of October, in the year one thousand eight hundred and fifty, appeared personally before me, Joseph C. Lawrence, an Alabama commissioner, in and for the State of New York, and acknowledged that he signed, sealed, and delivered the within deed of quitclaim to James M. Lindsay, on the day and year, and for the uses and purposes, therein mentioned; and at the same time personally appeared the within named E. Mary Center, wife of the said Edward C.

Center, who, being examined privately and apart from her husband, acknowledged that she signed, sealed, and delivered the said deed as her voluntary act and deed, freely, without any fear, threats, or compulsion of her husband.

Given under my hand and official seal, at the city of New York, [L. S.] this first day of October, A. D. 1850.

JOSEPH C. LAWRENCE,
Commissioner of Deeds for the State of Alabama, in New York, and Notary Public, 65 Wall Street.

Filed in office the 26th December, 1853. Recorded in Book F the 4th January, 1854, on pages 392 and 393.

H. W. COATE,
Judge Probate Court.

THE STATE OF ALABAMA, *Clarke County:*

I, H. W. Coate, judge of the probate court of said county of Clarke, Alabama, do hereby certify that the foregoing contains a correct copy of a deed from Edward C. Center to James M. Lindsay, as taken from the records on file in my office.

Given under my hand and seal of the court at office, this second [L. S.] day of November, A. D. 1854.

H. W. COATE,
Judge Probate Court Clarke County, Ala., and ex officio Clerk.

[No. 21.] GENERAL LAND OFFICE,
April 12, 1820.

I certify that, in pursuance of an act of Congress passed on the 3d of March, 1817, entitled "An act making provision for the location of the lands reserved by the first article of the treaty of the 9th of August, 1814, between the United States and the Creek nation, to certain chiefs and warriors of that nation, and for other purposes," the Secretary of the Treasury has confirmed the claim of Samuel and David Hale, (being number twenty-one,) and that the said Samuel and David Hale are entitled to occupy the following lands agreeably to the provisions of the said act, viz: fractional section twenty-one, of township six, in range five, on the west side of the river Alabama, in the State of Alabama, and district of Cahaba.

In testimony whereof, I have hereunto subscribed my name, and [L. S.] caused to be affixed the seal of this office, at the city of Washington, the twelfth day of April, 1820.

JOSIAH MEIGS,
Commissioner of the General Land Office.

GENERAL LAND OFFICE,
March 27, 1856.

I, Thomas A. Hendricks, Commissioner of the General Land Of-

fice, do hereby certify that the above is a true copy from the records in this office.

In testimony whereof, I have hereunto subscribed my name, and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

[L. S.]

THOS. A. HENDRICKS,
Commissioner.

IN THE HOUSE OF REPRESENTATIVES.—*February* 23, 1855.

The Committee on Private Land Claims, to whom was referred the petition of James M. Lindsay, of the State of Alabama, praying for the confirmation of his claim to certain lands embraced within the limits of an Indian reservation in that State, submit the following report:

By the 1st article of the treaty of August 9, 1814, between the United States and hostile Creeks, it was provided, among other things, "That where any possession of any chief or warrior of the Creek nation who shall have been friendly to the United States during the war, and taken an active part therein, shall be within the territory ceded by these articles to the United States, every such person shall be entitled to a reservation of land within the said territory of one mile square, to include his improvements as near the centre thereof as may be, which shall inure to the said chief or warrior and his descendants, so long as he or they shall continue to occupy the same, who shall be protected by and subject to the laws of the United States; but upon the voluntary abandonment thereof by such possessor or his descendants, the right of occupancy or possession of said lands shall devolve to the United States and be identified with the right of property ceded thereby."

Under the provisions of this trust, Samuel and David Hale, Creek chiefs, obtained a cession of fractional section twenty-one (21), township (6), range five (5), west of the Alabama river, and continued to hold the same until the year 1826, when they sold their claim to the same to one Adam Carson.

The certificates of reservation held by the Hales were assigned to Carson, but no other method of securing the title of said lands to Carson appears to have been resorted to by the parties, and petitioner asserts that said certificates cannot be found after diligent search.

In 1840 the lands aforesaid were levied upon and sold on execution as the property of said Carson, and purchased by one Lyman Gibbons, with the exception of 160 acres on the south side of said location. Gibbons sold to one Henry Center; Henry Center died in the undisputed possession of said lands, and Edward C. Center, his sole heir and executor, sold to petitioner.

The cession to the Hales is proved by the certificate of the Commissioner of the General Land Office submitted with the petition.

The sale by the Hales to Carson is clearly substantiated by the oaths of numerous respectable witnesses, whose credibility, certified by judicial officers of the State, places the transaction in a fair light. The witnesses swear that the consideration paid by Carson was at the time of the sale the full value of the lands sold by the Hales.

The sheriff-deed to the purchaser at his sale of the lands, the deeds attending the subsequent transfers, authenticated by a certified transcript of the records of Clarke county, Alabama, show that the equity of the petitioner and his claim for relief are based upon the strongest grounds.

Your committee, therefore, report a bill for the relief of petitioner, confirming his title to so much of said fractional section as is now held and occupied by him. (See Little & Brown's Statutes, pages 346 to 762, for acts relative to same class of lands.)

A BILL for the relief of James M. Lindsay.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the claim of James M. Lindsay, of the State of Alabama, to fractional section twenty-one, township six, range five, west of the Alabama river, except the south half of the southeast quarter, and the south half of the southwest quarter, of said section, be, and the same is hereby, confirmed, the lands herein described being the part of a reservation made to Samuel and David Hale, Creek Indians, by the treaty of the ninth of August, one thousand eight hundred and fourteen, between the United States and the hostile Creeks: *Provided*, That this act shall only be construed to vest in the said James M. Lindsay the reversionary interest of the United States, and not to prejudice the rights of *bona fide* claimants, other than the United States.

A BILL to relinquish the reversionary interest of the United States in a certain Indian reservation in the State of Alabama.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That all the right, title, and interest which might accrue or revert, or has accrued or reverted, to the United States, to a certain reservation confirmed to the heirs of William Jones, deceased, by certificate from the United States bearing date the twelfth day of April, one thousand eight hundred and twenty, being known and described as fractional section sixteen, and the southeast and southwest quarters of section nine, in township six, and range five, under a treaty made and concluded at Fort Jackson, on the ninth day of August, one thousand eight hundred and fourteen, and lying in the State of Alabama, be, and the same are hereby, relinquished and vested in Stephen Steele and James Daniel, respectively, according to the extent of their several interests therein: *Provided, however*, (and this relinquishment is made upon the condition,)

that the said Steele and Daniel, or either of them, have fairly, and in good faith, and for a valuable and adequate consideration, purchased of the said heirs, by authentic and valid deeds, their respective rights in and to the said reservations: *And provided further*, That no sale or conveyance of said reservation, or any part thereof, by the said reservees, or either of them, shall be deemed regular or valid, nor shall this act have effect until the President of the United States, or some officer to be by him designated, shall have approved such conveyance, and endorsed his approval thereon.

[Passed the Senate June 24, 1848. Passed the House of Representatives February 8, 1849. Approved February 19, 1849.]

I do declare this to be my last will and testament, should I die leaving no children. I give and bequeath unto my wife, Eliza Margaret, the income of all my estate during her natural life, including the use of all my negroes. At her death, it is my will that my property be equally divided between my brother Edward and sister Margaret. Should either my brother or sister die previous to me, I give all my estate to the one which may be living at the decease of myself and my wife Eliza Margaret. I do hereby appoint my brother Edward my sole executor.

Given under my own hand and seal at Mobile, this twelfth day of March, in the year of our Lord one thousand eight and thirty-five.

HENRY CENTER. [L. S.]

In the presence of—

EDWARD OLEMAN,
THOS. S. KING,
HY. A. BARCLAY.

Admitted to probate December 10, 1841.

THE STATE OF ALABAMA, *Mobile County:*

I, John A. Hitchcock, judge of the court of probate, in and for said county and State, do hereby certify that the foregoing is a true and correct copy of the last will and testament of Henry Center, deceased, as the same remains of record, and on file in my office.

In testimony whereof, I have hereunto set my hand and seal of said court, this 10th day of March, A. D. 1856.

[L. S.]

JNO. A. HITCHCOCK,
Judge.

CITY OF WASHINGTON, *District of Columbia:*

Personally appeared before me, P. Phillips, who being duly sworn, sayeth that he was well acquainted with Henry Center, who, during

his life, was a citizen of the State of Alabama, and resident of Mobile, in said city. That said Center died prior to October, 1850.

P. PHILLIPS.

MARCH 26, 1856.

Sworn to before me.

SAM'L H. HUNTINGTON,
Chief Clerk Court of Claims.

WASHINGTON, *March* 26, 1856.

It is agreed that the above affidavit may be used in said cause.

M. BLAIR,
Solicitor U. S.

JAMES M. LINDSAY *vs.* THE UNITED STATES.

The opinion of the court, was delivered by Chief Justice Gilchrist:

The prayer of the claimant in this case is, that Congress will pass a bill confirming his title to certain lands. The case comes before us by virtue of a resolution of the House of Representatives, and is submitted on the evidence referred to us.

The claimant alleges that, by the first article of the treaty of August 9, 1814, between the United States and the hostile Creek Indians, Samuel and David Hale, chiefs of the tribe, obtained a cession of land known as fractional section 21, township 6, range 5, west of Alabama river; that they occupied the land until the year 1826, when they sold it for a valuable consideration to one Adam Carson, assigning as a title their certificate of reservation; that in the year 1840 the land was levied upon as the property of Carson, and sold under a judgment rendered in Alabama by the sheriff of the county to the Hon. Lyman Gibbons, excepting one hundred acres on the south side of the location; that Gibbons sold it to Henry Center, who died in the undisputed possession of it; that Edward Center, his devisee and executor, conveyed it to the claimant, and that neither the possession nor the title of the various grantees has been questioned by any one. He presented his petition to Congress, and the Committee on Private Land Claims in the House made a favorable report thereon, accompanied by a bill for his relief, which was not acted on, and the case is submitted to us on the evidence laid before Congress.

The petition to Congress recites the above facts, and states, also, that, when Carson purchased the land of the Hales, he supposed that he purchased a good and perfect title in fee, and that they supposed they had a right to sell and convey a perfect title; that he paid a valuable consideration for the land, and that the transaction was fair and *bona fide;* that Carson, after occupying the land for two years, removed to Mississippi, where he died, and that, after diligent search, he has been unable to obtain the original certificates granted to the Hales, and transferred to Carson; that all the subsequent purchasers

took the title, believing it to be perfect and undoubted, and in every instance paid the full value of the land; that the petitioner purchased under the belief that his title was derived from the United States, and that he was not aware that they had, or could have, any claim to the lands, and that he paid the full value of the land, believing that the title was undoubted. He states also that he is informed that the courts of the country have decided that when an Indian reservee sells and conveys away the lands ceded to him it is an abandonment by the reservee, and the title reverts, *ipso facto*, to the United States. Of these decisions he says he was unaware at the time he made the purchase, and has every reason to believe that all the purchasers were equally unaware of them.

In relation to the sale by the Hales to Carson, Andrew Ormon testifies that about the year 1826 they sold the land to Carson; that the purchase was made for the consideration of one thousand dollars, which sum was then a full and fair price for the land; that the money was honestly paid by Carson, and the transaction was, in all respects, *bona fide*—the venders believing that they had a right to sell and make a good title, and the vendee believing that he purchased a good title to the land; and that, after the sale, and after the money was paid, all the parties were entirely satisfied with it. To the same effect are the depositions of Isaac Thompson and James Daniel; and Daniel also says that the land was offered to him at the same price, but he declined purchasing it.

The claimant also introduces an office copy of a deed from Robert B. Parker, sheriff of Clarke county, Alabama, dated on the 6th day of July, 1840, conveying the premises in question to Lyman Gibbons in consideration of $3,200, by virtue of a sale on a writ of *fieri facias* issued upon a judgment recovered by Archibald Brown against Carson.

Also, an office copy of a deed from Gibbons to Henry Center, dated on the 5th of June, 1841, releasing all the interest of Gibbons in the premises.

The claimant proved, by the affidavit of P. Phillips, esq., admitted as evidence by the assent of the solicitor, that Henry Center died previous to October, 1850, and introduced an attested copy of his will, dated on the 12th of August, 1855, constituting Edward Center his sole executor.

Also, an authenticated copy of a certificate from the Commissioner of the General Land Office, dated on the 12th of April, 1820, stating that the Hales had the right to occupy the land in question.

The first article of the treaty of August 9, 1814, (7 Stat. at Large, 120,) between the United States and the Creeks, cedes certain lands belonging to the Creeks to the United States. It also provides "that where any possession of any chief or warrior of the Creek nation who shall have been friendly to the United States during the war, and taken an active part therein, shall be within the territory ceded by these articles to the United States, every such person shall be entitled to a reservation of land within the said territory of one mile square, to include his improvements as near the centre thereof as may be, which shall inure to the said chief or warrior and his descendants

as long as he or they shall continue to occupy the same, who shall be protected by and subject to the laws of the United States; but, upon the voluntary abandonment thereof by such possessor or his descendants, the right of occupancy or possession of said lands shall devolve to the United States, and be identified with the right of property ceded hereby."

If the contingent interest of the United States depended merely upon the construction of the words "voluntary abandonment," it might perhaps be a proper subject of inquiry whether the sale of the right of the reservee, *bona fide* and for a valuable consideration, would be such a voluntary abandonment as is contemplated by the treaty, in order that the right of the reservee should devolve to the United States. But the evident intention of the treaty is not to give to the reservee an estate in fee-simple in the land, but merely a right of occupancy, as the reservee and his descendants are entitled to the land only "so long as he or they shall continue to occupy the same." The first section of the act of March 3, 1817, (3 Stat. at Large, 380,) designates the manner in which the chiefs and warriors of the Creek nation who are entitled to a reservation shall locate their reservations, and then provides "that the lands so selected shall inure to such chief or warrior so long only as he shall continue to occupy and cultivate the same; and, in case he shall not have abandoned the possession, shall, on his decease, descend to and vest in his heirs in fee-simple, reserving to the widow of such chief or warrior the use and occupation of one-third part of said lands during her natural life." This act, which appears to have been intended as declaratory of the meaning of the treaty, states with distinctness the interest which the reservees have in the land.

We cannot adjudge, in this state of things, that the petitioner has any legal cause of action against the United States, and that they are bound to release to him their interest in the lands in question. The case does not present a claim founded upon any law of Congress, or any regulation of an executive department, or upon any contract, express or implied, with the government of the United States. It comes before us by a resolution of the House. Our construction of the act constituting the court is, that we have no authority to determine that a party has a legal claim against the United States, unless it comes within one of the classes specified, or is founded on some legal right. We are authorized to examine any case referred to us by either house of Congress, to report our opinion upon the law, and to state the facts as we find them to be proved; but in relation to matters which address themselves particularly to the sound discretion and liberality of Congress, we do not feel ourselves authorized to recommend any legislation. In such cases the intelligence and sense of equity and right in Congress do not require any aid from us.

In the present case, our opinion as to the law is, that the claimant has no legal cause of action against the United States, and that they are not bound to convey to him their interest in the lands in question.

As to the facts, we find that the sale by the original reservees to Carson was made without fraud, in good faith, and for a valuable

consideration; and such was, also, the case with the subsequent conveyances, including that to the petitioner.

There are some considerations of an equitable character which may properly be considered by Congress. The reservation was intended for the benefit of the Indians. They received, and Carson and the subsequent grantees paid, not merely the value of the life estate of the reservees, but the value of the fee-simple of the land. The reservees considered it more for their interest to sell the lands than to occupy them. They might have retained the possession during their lives, in which event the fee would have descended to their heirs. It can make no difference to the United States whether the fee is in the heirs of the reservees or in the petitioner; and there would seem to be no necessity that, in a matter so important to the petitioner, and so unimportant to the United States, they should avail themselves of what is a strict legal right. If, in consequence of the sale of the lands, the position of the United States had been in any way affected for the worse, the case would present a different aspect. But the effect of the sale is to give the United States a legal right to the land which they had not before the sale; and it is for Congress to say whether, under the circumstances, they will take advantage of such right.

It may be added, that on the 23d of February, 1855, the Committee on Private Land Claims in the House made a report in favor of the petitioner, accompanied by a bill for his relief. At this late period of the session the bill was not acted upon, but the case was referred to this court. There is a precedent for such action as the petitioner asks, to be found in the act of February 19, 1849.—(9 Stat. at Large, 346, 762.) This act relinquishes to Stephen Steele and James Daniel the reversionary interest of the United States in a certain Indian reservation in the State of Alabama, provided they have fairly and in good faith, and for a valuable and adequate consideration, and by authentic and valid deeds, purchased the land; all which conditions we find have been complied with in the present case.

There are also precedents to be found in an act in favor of occupants under the treaty of Fort Jackson.—(6 Stat. at Large, 323; acts in favor of Samuel Brashiers and of William Hollinger, 6 Stat. at Large, 342; also, the act of May 29, 1830, 6 Stat. at Large, 441; act of July 14, 1832, 6 Stat. at Large, 519; and the act of June 15, 1844, 6 Stat. at Large, 916.)

We submit herewith a bill to Congress for the relief of the petitioner for such action as may be deemed proper.

34th CONGRESS, 1st Session. } HO. OF REPRESENTATIVES. { REPORT C. C. No. 11.

CYRUS H. McCORMICK.

MAY 16, 1856.—Reported from the Court of Claims. Committed to a Committee of the Whole House, and ordered to be printed.

CYRUS H. McCORMICK *vs.* THE UNITED STATES.

To the honorable the Senate and the House of Representatives of the United States:

The Court of Claims respectfully present the following report in the case of Cyrus H. McCormick *vs.* the United States:

1. The petition of the claimant, filed in court November 10, 1855.
2. The opinion of the court delivered on the 10th day of March, 1856, in the case submitted without brief or argument.
3. Memorial to Congress and accompanying documents, referred to the Court of Claims by the House of Representatives, March 3, 1855, constituting all the evidence in the case. These documents are attached to the report presented to the House of Representatives.

By order of the Court of Claims.

In testimony whereof, I have hereunto set my hand and affixed the [L. S.] seal of said Court, at Washington, this first day of April, A. D. 1856.

SAMUEL H. HUNTINGTON,
Chief Clerk Court of Claims.

To the honorable the Judges of the Court of Claims:

The petition of Cyrus H. McCormick respectfully represents, that heretofore, on the 21st day of June, eighteen hundred and thirty-four, he obtained a patent from the United States for a certain new and useful improvement in reaping-machines, giving him an exclusive right therein for the period of fourteen years. That nearly the entire of this period was occupied in the endeavor to bring his invention into general use, and was attended by loss of time and heavy pecuniary expense. That his receipts from the sale of the same were comparatively small, and altogether insufficient to give him the advantage the patent contemplated. That he afterwards, and before the expiration of the said fourteen years, to wit: on the 19th of January, 1848, and under the authority of the eighteenth section of the act of Congress of the 4th July, 1836, applied for an extension of the patent; but the same was refused, because of an alleged informality in the taking of his evidence, as will appear by a letter from the Hon. Edmund

Burke, then the Commissioner of Patents, a copy of which is herewith filed, marked A, and prayed to be considered as a part of this petition. That afterwards, at the session of Congress of 1853, he memorialized that body for a renewal of the patent; and, as his memorial was subsequently modified, for a law authorizing the Patent Office to rehear the case, as will appear by a copy of his memorial and the bill reported by a committee of the House of Representatives at the session of 1855, marked B and C, and prayed to be considered as a part of this petition. That the memorial and the bill were before and pending in said House at the last session thereof, and were, with all the matters appertaining to the same, by order of said House referred to this honorable court, by means whereof this court became vested with jurisdiction over the same, and authorized to decide whether, under all the circumstances attending the said application to Congress, he should be entitled to a rehearing of his claim for such extension of his patent. Your petitioner also herewith exhibts a copy of his said patent of 1834, and of his petition to the office for an extension thereof, hereinbefore referred to, marked D and E, and prayed to be considered as a part of his petition; and prays for such relief as he may seem entitled to.

REVERDY JOHNSON,
For Petitioner.

A.

GENTLEMEN: Your letter of March 1st instant has been duly received; and in reply to the inquiries which it contains, I have the honor to state the grounds on which the board for the extension of patents under the 18th section of the act of July 4, 1836, reorganizing the Patent Office, declared to extend the patents of Obed Hussey and Cyrus H. McCormick for reaping-machines; they are as follows:

1st. In relation to the patent of Hussey, if my memory serves me, his patent expired some time within the latter part of December, 1847. During that month, and within some ten or twelve days before the expiration of his patent, he applied to me, as Commissioner of Patents, for an extension. I informed him that inasmuch as the act of Congress prescribed the mode in which patents should be extended; required a reasonable notice to be given to the public in sundry newspapers, published in those parts of the country most interested against such extension; and as the board had decided that "reasonable" notice should be a publication of the application for extension three weeks prior to the day appointed for the hearing, there was not time to give the required notice in his case; and I advised Mr. Hussey not to make his application, and thus lose the fee of $40 required in such cases—as he inevitably would, without the least prospect of succeeding in his application—but to petition Congress for an extension, which body had the power to grant it. This is all which I, as Commissioner of Patents, had to do with Mr. Hussey's application.

2d. As to the case of Mr. McCormick, during the same winter, (of 1847-'48,) and after Mr. Hussey had applied to me for the extension

of his patent, Mr. McCormick made application in due form, and in season, for the extension of his patent, which was granted in June, 1834, and consequently expired in June, 1848. Due notice was given; and on the day appointed for a hearing, Mr. Hussey appeared to contest the extension of McCormick's patent. And on examination of the records of the Patent Office, and a comparison of the two patents, it appeared they both covered one or more features substantially identical in principle, but not the same precise combinations. And inasmuch as Mr. Hussey's patent bore date before McCormick's, the board decided that he was *prima facie* the inventor of the feature, or rather claim, which conflicted. But Mr. McCormick contended that he invented the part of the machine embraced in both patents one or two years before Hussey obtained his patent, and was, in fact, the first and original inventor; and he prayed for a continuance of the hearing until he could take testimony upon that point to sustain his right.

His request was granted, and he was ordered to take testimony, with due notice to Mr. Hussey.

He complied with the orders of the board; but on an examination of the testimony on the next day of hearing, it was found to have been informally taken, and therefore ruled out.

Mr. McCormick subsequently made efforts to supply the defects, but never did satisfactorily to the board, and they declined extending his patent. Such is a brief history of the proceedings before the board of extension on McCormick's application.

I will now give my views with regard to the merits of the invention itself. I do not hesitate to say that it is one of very great merit. In agriculture, it is, in my view, as important, as a labor-saving device, as the spinning-jenny and power-loom in manufactures. It is one of those great and valuable inventions which commence a new era in the progress of improvement, and whose beneficial influence is felt in all coming time; and I do not hesitate to say, that the man whose genius produces a machine of so much value, should make a large fortune out of it. It is not possible for him to obtain, during the whole existence of the term of his patent, a tenth part of the value of the labor saved to the community by it in a single year. Therefore I was in favor of its extension.

There were, however, other reasons which induced me to favor its extension. One was the fact that the machine was one which could be used only a few weeks in each year. Therefore, for want of an opportunity to test it, its perfection must be a work of time and tediousness. It is not like the steam-engine and other machines in common use, upon which improvements may be at any time tested. Therefore the invention and perfection of a reaping machine must be a work of slow progress. And such was the case with McCormick's machine. He was many years experimenting upon it before he succeeded in making a machine that would operate, as the testimony before the board (although informal) clearly proved. In the next place, it is a machine which was difficult to introduce into public use. It was imperfect in its operation at first. It had to encounter the prejudices and the doubts and fears of agriculturists. And it appeared, in proof, that Mr. McCormick was not able to sell but very few machines

until two or three years before the expiration of his first patent, which covered the leading original principles of his invention. Under that patent he never received anything like an adequate compensation for the really great invention which he had produced. And I now repeat, what I have always said, that his patent should be extended. With regard to the conflicts of rights and interest between him and Mr. Hussey, it is proper for me to remark, that when both these patents were granted, the Patent Office made no examination upon the points of originality and priority of invention, but granted all patents applied for as a matter of course. Therefore, it is no certain evidence that, because an alleged inventor procured a patent before his rival, he was the first and original inventor. It, in fact, was a circumstance of very little weight in its bearing upon the question of priority between the parties. Besides, the testimony of Mr. McCormick presented to the board of extension clearly proved that he invented and put in operation his machine in 1831, two years before the date of Hussey's patent.

But my opinion is, that justice will be best subserved by extending the patents of both parties. Their claims are not in all respects identical, but both include features and combinations which would entitle either of them to a patent, if he were to strike out of his patent all that the other claimed. Besides, if these patents were extended, they could then settle their respective rights in a court of law, if they should so elect.

I again repeat that, in my judgment, McCormick's patent should be extended. That was my opinion when the matter was before the board of extension, and it has never changed.

McCormick has two other patents for improvements upon his machine, the last of which expires in 1861. They all relate to the same machine, and there would be great propriety in extending his first and second patents to the date of the expiration of his third and last one. This would, in fact, consolidate the invention, and secure his just rights. Mr. Hussey's patent could be extended to the same date, and thus the rights of both would be secured. They are both meritorious inventors, and have produced machines of great value, but for which they have not been able to secure an adequate remuneration, because their machines are adapted to use only for a very small portion of the season.

I have the honor to be, respectfully, your obedient servant,

EDMUND BURKE.

HON. STEPHEN A. DOUGLAS,
HON. JAMES SHIELDS,
United States Senate.

B.

To the Senate and House of Representatives of the United States in Congress assembled:

The petition of the undersigned, Cyrus H. McCormick, of Chicago, in the State of Illinois, respectfully represents:

That he is the first and original inventor of a certain new and useful improvement in reaping-machines, of very great value and importance to the country, for which letters-patent of the United States, dated on the twenty-first day of June, eighteen hundred and thirty-four, were issued, granting to your petitioner the exclusive right to use the same for the term of fourteen years from that day; that during the whole term for which said letters-patent were originally granted, your petitioner was occupied by the effort to bring his said invention into general use, at a very heavy expense of money and loss of time; and that during all that time the receipts were insufficient to pay the expenses and compensate him for his time employed in that business, whereby he never received any compensation for the ingenuity or value of his invention.

Your petitioner, therefore, prays that, upon the proof of these facts, your honorable bodies will enact a law extending his said patent for the term of fourteen years from the twenty-first day of June, eighteen hundred and forty-eight, at which time the original patent expired, saving to all persons all rights which they may have acquired since the date of the expiration of said patent.

C. H. McCORMICK.

WASHINGTON, *December* 18, 1853.

Action of Congress.

December 20, 1853, referred to Committee on Patents.
February 23, 1855, bill No. 782.
March 3, 1855, referred to Court of Claims.

Opinion of the Court.

Opinion of the Court delivered by Chief Justice Gilchrist.

The Court are of opinion that the claim is not founded upon any law of Congress, or any regulation of an executive department, or any contract, express or implied, with the United States, or upon any legal right.

It is simply a petition to Congress to pass a law, which it is in the discretion of Congress to enact or not, as they shall deem best. The Court have no authority to regulate the discretion of Congress, or to recommend any legislation. There is in no sense any claim upon the United States, except such as may be addressed to their views of what is on the whole proper. Consequently, the Court have no jurisdiction to order testimony to be taken.

MEMORIAL AND ACCOMPANYING DOCUMENTS.

To the Senate and House of Representatives of the United States in Congress assembled:

The petition of the undersigned, Cyrus H. McCormick, of Chicago, in the State of Illinois, respectfully represents: That he is the first and original inventor of a certain new and useful improvement in reaping-machines, of very great value and importance to the country, for which letters-patent of the United States, dated on the 21st day of June, 1834, were issued, granting to your petitioner the exclusive right to use the same for the term of fourteen years from that day; that during the whole time for which said letters-patent were originally granted, your petitioner was occupied by the effort to bring his said invention into general use, at a very heavy expense of money and loss of time; and that during all that time the receipts were insufficient to pay the expenses and compensate him for his time employed in that business, whereby he never received any compensation for the ingenuity or value of his invention.

Your petitioner, therefore, prays that, upon the proof of these facts, your honorable bodies will enact a law extending his said patent for the term of fourteen years from the 21st day of June, 1848, at which time the original patent expired, saving to all persons all rights which they may have acquired since the date of the expiration of said patent.

Dated Washington, December 18, 1853.

C. H. McCORMICK.

Extract from record, April 17, 1854.

The case of Cyrus H. McCormick being called up, the clerk was called upon to read the brief prepared by him in the case. On motion of Mr. Fessenden, a vote was taken on the question, "Shall the applicant be allowed to make his application to the Commissioner of Patents for extension of his patent for seven years from the passage of an act upon a bill reported for that purpose?" and resulted as follows—it being understood that Mr. Evans would vote against the motion, and the chairman was authorized to consult Judge E. in the Senate, and receive his vote; which being done, the vote stands:

	Yes.	No.
Mr. James	1	0
Evans	0	1
Stuart	0	1
Chase	0	1
Thompson	1	0
Fessenden	1	0
	3	3

So the motion was lost. Committee, on motion, thereupon adjourned.

DEWITT C. LAWRENCE, *Clerk.*

Memorandum on the case of C. H. McCormick, for the renewal of his patent, now before Congress. March 20, 1854.

In applying at the Patent Office for an extension of a patent, the law requires that a statement be made, under oath, of the profits derived under it—of course under and during the existence of the patent, because required to be made prior to its expiration, and such is the ground taken and conceded by the remonstrants. The application is for the extension of the patent, in order, of course, that protection may be afforded by the patent, protection in the exclusive use of the thing patented for the term of seven years, without regard to the amount of profits derived from it during that period of time. This is the right provided by law for the inventor, if the full value of his invention shall not have been realized by him during the first term of fourteen years—of course intending that he shall be secured in the benefit of his invention for the time contemplated by the law, otherwise it would have been provided that the time of extension should be in some proportion to the amount of profit derived from it during the existence of the first patent, thus limiting the aggregate amount of profits—and this, obviously, upon the ground that in proportion to the value of the thing patented, will, and should be, the measure of reward to the inventor. The exclusive control of the invention, then, for the time contemplated by law, is the just right of the inventor, whether that shall yield him one thousand or one hundred thousand dollars per annum.

Then, where separate patents are taken for subsequent improvements, the only protection afforded to the inventor, after the expiration of the first patent, is, through such subsequent patents, to the improvements claimed in them. In this case, for instance, a second and third patent were taken out for improvements essential to the entire success of the first invention; and after the expiration of the first patent, "pirates" not only seize hold of that, but also infringe the second and third. They are sued for the infringements, and a judgment obtained for damages equal to the whole profit realized on the sale of the machines. A question then arises, whether a portion of those damages apply to the invention embraced in the first patent? The answer is, no; for the maker had a right to use all that was embraced in the expired patent, and, of course, could not be charged in estimating the damages with what he had a right to use. If any such distinction could be made, the damages would only be estimated according to some supposed proportion of value between the patented improvement infringed, and the other parts of the machine, no matter by whom invented. But certainly, in a suit for the infringement of a patent, the court neither inquires into the value of other parts of the machine on which the infringement is found, nor by whom they were invented.

On this point Judge Nelson says: "On the contrary, according to my view of the law regulating the measure of damages in cases of this kind, the rule which is to govern is the same, whether the patent covers an entire machine, or an improvement on a machine." The

best evidence of the value and importance of the improvement so appropriated is the fact of such unlawful appropriation and use of it; while, in this particular case, the charge of Judge Nelson to the jury, and the fact of the same party being now under a second injunction for further infringements, would seem conclusive.

Nor can the case, as above stated, disparage the value of the first invention.

By way of illustration, suppose that a man should invent and patent the general plan and arrangement of a clock, except the arrangement of the hands for marking the time, but that thirteen years of the patent should pass before so completing the details and very accurate proportions of the parts, with the addition of the hands, as to make a perfect operating clock, when he patents the hands—only one year before the expiration of the first patent—thus perfecting the invention. In that case, the first thirteen years of the (first) patent, in the language of Judge Nelson, (in his charge in my suit,) would only operate to "prevent the hazard of abandonment." Application is made for an extension of the first patent, and is refused on the ground of informality on some point in presenting the case, while on its merits unexceptionable, not a dollar of actual profit having been realized for the invention, thus leaving him only his patented protection to the hands. But, the way once opened, other methods of marking the time are devised, and so the clock is built by any body. Does that man get his proper and lawful remuneration for his invention of the clock? He had a proper case, according to law, when he applied for an extension, but was deprived of his right to seven years' exclusive use of it by a mere technicality, and that injustice is therefore perpetuated unless he be relieved in some way by act of Congress. Can any stronger case for the renewal of a patent by Oongress be presented?

The case above stated is believed to be precisely parallel with my own in principle, except that in mine the first period of fourteen years was only equal to fourteen months of actual time for improving and perfecting the invention, limited as I was to the harvest season in each year for making and testing such improvements, which makes my case a much stronger one than the other; and except, further, that by way of removing all difficulty from the minds of such as have doubts as to the propriety of independent legislation on patents by Congress in any case, a reference to the Patent Office for a re-hearing on its merits is all that is in this case now asked for, where objectors can appear and contest at the proper place, on all proper grounds. If, as stated by interested lawyers or manufacturers, the signers to the remonstrance, (not by the farmers of the country, who save the price of their machines in a single harvest, thus being but a nominal cost to them,) there is really nothing new in the original invention, the Patent Office is the place to show the fact; or if, as they further say, whatever may be found new in the first invention was sufficiently compensated for "during the existence of the patent," let that also be shown at the Patent Office.

Again: it has been said by opposing parties that by patenting improvements from time to time "the monopoly may be perpetuated;"

but a moment's examination, it is respectfully submitted, will show the fallacy of this idea. The patents for improvements, as has been stated, only protect what is claimed in them, (which must be assumed to be "new and useful," or the patent would not have been granted,) and they can, of course, have no bearing on the question of extension of a prior patent while under all together there are no profits in the case, as was the case at the expiration of my first patent. If there had then been profits realized, and it had been claimed that they should be set to the account of the subsequent patents, the question might properly have been raised whether a part or the whole should go to the account of the first. That question has been raised and examined by the present Commissioner of Patents in two of his decisions that I have seen, and would doubtless apply in this case, if a second extension were hereafter to be asked for, when an estimate of profits would properly be required to the expiration of the first extension.

Again: if the improvements in this case had been made and patented by another person—all others having had the same means of improving that I had—of course I would have been left without any profit whatever; and yet, how can my claim to the benefit of the first invention be less because of having made further improvements? And in the mean time, if others have their machines and improvements, let them also be protected in the use of the same, according to law.

The renewal for fourteen years now applied for in this case can only afford the protection of the first patent for seven years, as if granted when applied for at the Patent Office.

Respectfully submitted by your obedient servant,

C. H. McCORMICK.

WASHINGTON, *April* 4, 1853.

The questions propounded to me yesterday by members of the honorable the Committee of the Senate of the United States on Patents, have brought to my mind the following suggestions, which I now most respectfully submit for the consideration of said committee, viz:

First, as to the suggestion of Senator Stewart, that the letter of Mr. Burke, addressed to Senators Douglas and Shields, and adopted in the unanimous report of the Patent Committee of the last Congress made in my case, was written two years after the action of the patent extension board on my case, and after he had resigned the office of Commissioner of Patents. This suggestion, it would seem, was calculated to affect the influence of that letter upon the minds of the Committee on Patents, by questioning the statements it contains. For the purpose, therefore, if need be, of corroborating the statements made in this letter—after submitting whether it would have been proper for Mr. Burke, while Commissioner of Patents, to have written such a letter, when the case, or points in it, might have been referred back to him—I have procured the accompanying certificate of P. R. Fendall, esq., who first reviewed the decision in question, as my counsel, (as seen from the papers in the case,) and which would

seem to be conclusive upon that point; and I would respectfully ask, by what authority the statement made by Mr. Burke can be questioned?

On what ground, then, could the testimony in the case have been so "ruled out," except the following:

Having had no counsel in the case, and supposing that the affidavits of witnesses—taken precisely as they are always taken in cases of applications for injunction—was all that was required, and having thus taken them, in some cases written by myself, (as is done in injunction cases,) on re-taking the same, as ordered by the Commissioner, with notice to Mr. Hussey, the recollection of one of the witnesses (Mrs. John Steele) failed her, in consequence of some derangement of her mind which had occurred, and which has been explained by Governor McDowell, in a letter now among the papers in the case. Another letter, too, of the honorable John Letcher, (from the same county,) among the papers, certifies the good character of the witnesses; and if anything more were wanting, the letter published by me, prior to the date of my patent, in the New York Mechanics' Magazine, on seeing in the preceding number of that paper a notice of Hussey's patent, granted the December previous (1833), would seem to supply it. In that letter (a copy of which is among the papers in the case) I informed "Mr. Hussey and the public" that my machine had been exhibited publicly, in operation, on the farm of Mr. John Steele, neighbor to my father, in the harvest of 1831, and at a time when a letter addressed to Mr. Steele (then postmaster) would have drawn out all the particulars in the case.

Since the case was before the Patent Office, moreover, Mr. Hussey, as a witness in my suit *vs.* Seymour and Morgan, swore that his first experiment with his machine was made in the harvest of 1833, (see the certificate of General Stevens,) of which there was, of course, no knowledge by the board when the case was before them. Hussey's first experimenting in the cause, for aught that appeared to the board, might have been as long before the date of his patent as mine was proved to have been, by five or six witnesses, satisfactorily to Mr. Hussey—as his letter to the commissioner, which has been referred to, in connexion with his argument that the two machines were unlike, clearly shows—and satisfactorily to Mr. Burke.

Now, I respectfully submit that, when it is considered that in granting an extension of a patent, the Commissioner of Patents does not undertake to perfect it, but grants it, provided there be enough of novelty and merit in it to justify an extension, leaving all beyond that to the patentee and the courts, (see Mr. Burke's letter,) while the patent, if too broad in its claims, must be disclaimed accordingly, or surrendered and re-issued, to be valid and available, can it be possible that this case failed at the Patent Office "on its merits?" or, in short, if the testimony ordered by the Commissioner of Patents did satisfactorily prove to him and to the contesting party in interest that the first trials of my machine were made prior to the date of Mr. Hussey's patent, and with no proof of any prior use by Mr. Hussey, and such testimony was "ruled out," and not before the board in making their decision, could the case have been tried and rejected "on its merits"

—there having been no profits in the case—even if the decision had been unanimous!—and still less so when the Commissioner was himself in favor of the extension.

And here I would respectfully beg leave to draw a comparison between the points in this case and another which has been reported to the Senate by the honorable committee—(Moore & Hascall's.)

In this case I ask a renewal of what is in my patent only, with the right of course to prove priority of the same over others. In the other case, as reported, the right is given to prove anything out of the patent.

If proof by several witnesses is objected to in this case, in the other a single witness may prove what was in the model, (not in existence for eighteen years,) though not in the patent. In this case special notice was at the earliest moment given to the public and all concerned in the matter of what was claimed, in addition to the recorded patent; while, in the other, no notice whatever was given of a claim at all until after the expiration of the patent, though made to what might have been for many years in public and general use under the eye of the claimant. In this case application was regularly made at the Patent Office for the renewal, in due time and form, according to law; in the other, no attempt was made at a compliance with the law, by application at the Patent Office, either for patents for the improvements claimed or for the extension of the patent. In this case provision is made for the protection of those in the use of the improvement during the interval between the expiration and renewal of the patent; in the other, no such provision is found. In this, the value and importance of the invention is fully established; in the other, as appears from the report, not a single machine has ever yet been sold. The difficulties attending the improvement and introduction of the respective inventions referred to were the same.

Next, in addition to what I have already had printed on this point, I would respectfully ask leave to illustrate the inapplicability of Mr. Stuart's interrogatory propounded to me on the question of profits from my manufacturing, by a comparison with another case which has recently passed Congress, and become therefore a law and a precedent.

Mr. Stuart objects to the renewal of my patent, because of the profits derived from the manufacture of my machines since its expiration. While the best evidence that the time which has elapsed since the expiration of my patent has been no fault of mine, is the fact that not a single act has been passed by Congress for the renewal of a patent during the six years that my case has been constantly before it, save the one just referred to, (which was here five years,) how do the points in that case compare with mine?

In the case of a renewal and extension of the patent for felt cloth, an extension of seven years had been granted at the Patent Office, which exhausted the present provision of the law for the relief of inventors; while in addition to that twenty-one years, Congress has granted a renewal and extension of fourteen years. This is what I conceive to be the spirit of the law, while it is certainly the utmost extent to which the present policy of the law would seem to warrant.

Supposing the inventor and his heirs to have required his twenty-one years to complete their invention, and that now (from the specimens they furnish) they are prepared to enter upon the manufacture of the article successfully and extensively—on a scale commensurate with the demand of the country—they will have an available exclusive use of their invention for the term of fourteen years, with all the profits connected with and which can be secured from it.

Now the first point of comparison I would suggest is, that the improvements made on this invention since the first patent was granted, must either have been "essential," (as Mr. Stuart inquired of mine,) or there was no value in the principle or process discovered, by which there was and is nothing in it valuable either to the public or inventor; or, the present proprietors are incapable, from want of energy or the faculty to improve and complete the invention, of doing justice to its true merits, together with the wants and interest of the public, in giving to them a valuable improvement—in either of which latter cases no interposition of Congress was required so long to lock up from the use of the public a valuable invention.

But, as stated, from the specimens exhibited, and the fact as claimed, that 30 per cent. is now saved by it in expense of manufacturing, taking the first proposition to be correct, how does the case then stand? I repeat, the proprietors of this invention then have the "monopoly" of their improvement for fourteen years, (in addition to the twenty-one,) with the benefit of the results of the 30 per cent. saved, without regard to the amount of profits to be realized therefrom; and 30 per cent. advantage in the manufacture of the woolen cloths of this country for fourteen years should amount to a handsome sum, to say the least. But it has been said by some one that this was not a monopoly, because it did not interfere with the other manufactures of cloth in the country. This, it is respectfully submitted, is an erroneous distinction. It is a monopoly just to the extent of the value of the improvement patented; and if, instead of 30 per cent., (which is very large,) 50 per cent. were saved by the invention, it is presumed the inventor would not be the less entitled to the benefit of his invention.

By the invention of the reaping-machine the public were not deprived of the use, as before, of their cradles and reaping-hooks; but while the use of the former (when completed) would save to them more than its cost in cutting a single harvest, they would not be likely to continue the use of the old instruments very long, when the new one could be had. So, by any improvement in reaping-machines secured to a particular inventor, neither the public nor other inventors can be deprived of the use of other improvements in the same line—the monopoly in one case, as in all, being properly to the extent of the improvement invented and patented, and no further. And any real improvement made by one man upon a patented machine or improvement of another, will in like manner introduce itself on the principle upon which the original is introduced; in either case the user of the prior instrument has only to be convinced of the advantages of the improvement offered, at its price, of course, to insure its adoption.

But to return to the cloth case again: what I regard rather as liberality on the part of Congress in that case is, that, after the twenty-one years, fourteen more should be granted, without rest or account at the end of the first seven years—which, however, is the shortest period of time provided for patent extensions—and by which, if a million of dollars should be realized from the invention at the end of seven years, another million may still be made during the next seven. By this principle I should have been *more* than entitled to *fourteen years* at the expiration of my patent, as I had then had only *fourteen months* of actual time in which to perfect my machine by making the "essential" improvements to its complete success; while in the cloth case there were in the twenty-one years, two hundred and fifty-two months, just eighteen times as much as I had. Can I be less entitled to the residue of the fourteen years now that I have awaited the action of Congress until half of it must have passed ere I could have the benefit of it, and with all the losses and expenses which I have in the meantime incurred?

Again: as I have yet derived no benefit from my patent, ought I not to have the benefit of its protection for seven years—if a proper case be made out at the Patent Office—if fourteen years is granted in another case, after having had eighteen months for completing by experiments the invention for every one that I have had?

In regard to profits realized from manufacturing my machines subsequent to the expiration of my first patent, under patents for those subsequent essential improvements, I have stated my views on that point more particularly in another (printed) paper, and which I need not repeat; but I would respectfully submit, whether I could possibly be less deserving of an extension of my patent because of having persevered, by means of additional improvements and patents, in supplying the demand of the country with my machines, to the greater advantage of the purchasers of them, than if I had stopped, as did the patentees in the first case above stated, without accomplishing anything practically valuable?

And I would beg leave to refer to the numerous cases found in different parts of the country—and some such now in Congress—of persons having amassed large fortunes from the energetic and skilful prosecution of an ordinary mechanical business, without any patent protection of any sort. Would any one hold that, because of the success of such men in manufacturing, they should not be entitled to equal rights and privileges with others for special benefits conferred on the public generally? Certainly not. Is the case under consideration not a stronger one, then, since in it the public have been furnished with an article of more value and importance to them, because not in common use, and which had rather, in the first place, to be urged upon them at a great risk and responsibility, with strong guaranties, which few would undertake, in consequence of the want of confidence in it, and in the promises of him who introduced it; and all this at the hazard of the entire loss of all that had been done, until the point of practical success had been reached, against the sneers of an incredulous community?

When the value and importance of the article is once thoroughly

established, however, and not till then—when hazard, and even ruin, no longer threatened—scores of competitors for the honor and the profit of the fruits of another's labor, toil, and "ingenuity," eagerly present themselves.

And here it may be remarked that it was the tedious and protracted course of experimenting only, through a period of many years, (or more properly harvests,) that finally enabled the original and persevering inventor to perfect his invention by his subsequent improvements from time to time made.

Finally, it is respectfully submitted that by a reference of my case to the Patent Office for a rehearing "on its merits," as is proposed, no injustice can result therefrom to other parties or interests.

C. H. McCORMICK.

Report drawn by Governor Seward while on the Committee on Patents.

The Committee on Patents and the Patent Office, to whom was referred the petition of Cyrus H. McCormick, for the extension of letters patent granted to him on the 21st June, 1834, for improvements in the machine for reaping all kinds of small grain, report:

That the application thus referred to the committee underwent an examination before the Senate Committee on Patents during the first session of the last Congress, who reported a bill in accordance with the prayer of the petitioner. That report was marked 160, and bears date March 30, 1852.

The committee find the facts of the case accurately stated in the report, and its conclusions seem to be just. Nothing is now shown to disprove the former or to induce a doubt concerning the latter.

Inasmuch as the said McCormick was prevented by an informality from obtaining an extension in the ordinary mode, it seems to the committee nothing but just that he should be placed in his original position. His invention is a most valuable one, and errors or mistakes ought not to be permitted to exclude him from the benefits to be derived from his own industry and ingenuity. Every inventor of a valuable article adds so much to the wealth of the world, and it is but just that the law should secure to him a fair reward. The committee, therefore, recommend a reference of the question to the Commissioner of Patents, to be by him tried and determined upon its merits, and according to the settled principles of the patent laws. To which end they report the accompanying bill, and recommend its passage.

IN SENATE, *June* 21, 1854.

The Committee on Patents and the Patent Office, to whom was referred the petition of Cyrus A. McCormick, for the extension of letters patent granted to him on the 21st June, 1834, for improvements in the machine for reaping all kinds of small grain, report:

That the application thus referred to the committee underwent an examination before the Senate Committee on Patents during the first

session of the last Congress, who reported a bill in accordance with the prayer of the petitioner. Said report was numbered 160, and bears date March 30, 1852. The facts in that report appear to be correctly set forth.

On a re-examination of the petitioner's application by this committee, they are not satisfied that the hearing of his case before the board of extension, referred to in the former report, was such as, in its results, was calculated to do him justice, inasmuch as the issue tried was a mere question of priority of invention between McCormick and Hussey, without reference to material points of difference in the two machines. And it is now understood by the committee that the machines of McCormick and Hussey do not necessarily interfere with each other, and that an extension of either patent would not operate injuriously on the rights pertaining to the other. As the invention of the petitioner has, with his subsequent improvements, proved to be of great importance to the agricultural community, and he has failed to obtain an extension in the mode prescribed by law, under a misapprehension of facts, as the committee are inclined to believe, it would seem no more than just to place him in his original position. Errors and mistakes ought not to exclude him from the benefits to be derived from his own industry and ingenuity.

The committee, therefore, recommend a reference of the question to the Commissioner of Patents, to be by him tried and determined upon its merits, and according to the settled principles of the patent laws; to which end they report the accompanying bill, and recommend its passage.

IN THE HOUSE OF REPRESENTATIVES, *February* 23, 1855.

The Committee on Patents, to whom was referred the petition of Cyrus H. McCormick, for the extension of letters patent granted to him on the 21st day of June, 1834, for improvement in the machine for reaping all kinds of small grain, make the following report:

That at the 1st session of the 32d Congress, the said petition was reported upon by the Committee on Patents and the Patent Office of the Senate. Your committee have examined the said report, and find that it substantially sets out the facts connected with said petition; they therefore refer to said report and adopt the same as their own. They would likewise report a bill for the benefit of said Cyrus H. McCormick, and recommended its passage.

IN SENATE, *March* 30, 1852.

The Committee on Patents and the Patent Office, to whom was referred the petition of Cyrus H. McCormick, for the extension of letters patent granted to him on the 21st day of June, 1834, for improvement in the machine for reaping all kinds of small grain; and also the letters patent granted the said Cyrus H. McCormick,

dated the 31st day of January, 1845, for a new and useful improvement in reaping-machines, ask leave to report:

That by the originals presented to the committee, and now on file, it appears that three patents have been granted to the petitioner for improvements in reaping-machines—the first dated January twenty-first, one thousand eight hundred and thirty-four; the second dated January thirty-first, one thousand eight hundred and forty-five; and the third dated October twenty-third, one thousand eight hundred and forty-seven.

That on the 19th day of January, 1848, he made due application to the board of extension, under the provisions of the eighteenth section of the act approved July 4, 1836, for the extension of his first patent.

That said board, on the 23d day of March, 1848, ordered that the petitioner go into proof of propriety of invention, as between him and Obed Hussey, esq., who, about the same time, had appeared before the Commissioner of Patents for the purpose of filing an application for the extension of a patent for a reaping-machine, granted to him on the 31st day of December, 1833; and who, it appears, did not file his application for the same in time to give the sixty days' notice required by law, and who, therefore, was compelled to abandon such application, and thereupon appeared before the board in opposition to the extension of the patent of the said Cyrus H. McCormick.

That such order of the board was based upon the fact that the patent of the said Hussey bore date previous to the date of the petitioner's first patent, and thus, *prima facie*, said Hussey appeared to be the first inventor.

That testimony was thereupon taken, in compliance with the order of the board; and by the proof submitted on the part of said McCormick, it appeared conclusively that he invented his machine, and first practically and publicly tested its operation, in the harvest of 1831. That no proof on the part of the said Hussey appears to have been submitted to the said board, as to the date of his said invention; but from the exhibits referred to your committee, it appears that his machine was first constructed and operated in 1833. (See exhibit 17.)

That on the 29th day of March, 1848, the said board decided against the extension of the petitioner's patent; reasons for such action on the part of the said board being set forth in exhibit marked D, being a letter of the Hon. Edmund Burke, late Commissioner of Patents, to Senators Douglas and Shields, under date of March 4, 1850, viz:

"GENTLEMEN: Your letter of March 1st instant has been duly received; and in reply to the inquiries which it contains, I have the honor to state the grounds on which the board for the extension of patents under the 18th section of the act of July 4, 1836, reorganizing the Patent Office, declared to extend the patents of Obed Hussey and Cyrus H. McCormick, for reaping-machines; they are as follows:

"1st. In relation to the patent of Hussey, if my memory serves me, his patent expired some time within the latter part of December, 1847. During that month, and within some ten or twelve days before

the expiration of his patent, he applied to me, as Commissioner of Patents, for an extension. I informed him that inasmuch as the act of Congress prescribed the mode in which patents should be extended; required a reasonable notice to be given to the public in sundry newspapers, published in those parts of the country most interested against such extension; and as the board had decided that 'reasonable' notice should be a publication of the application for extension three weeks prior to the day appointed for the hearing, there was not time to give the required notice in his case; and I advised Mr. Hussey not to make his application, and thus lose the fee of $40 required in such cases—as he inevitably would, without the least prospect of succeeding in his application—but to petition Congress for an extension, which body had the power to grant it. This is all which I, as Commissioner of Patents, had to do with Mr. Hussey's application.

"2d. As to the case of Mr. McCormick, during the same winter, (of 1847–'48,) and after Mr. Hussey had applied to me for the extension of his patent, Mr. McCormick made application in due form, and in season, for the extension of his patent, which was granted in June, 1834, and consequently expired in June, 1848. Due notice was given; and on the day appointed for a hearing, Mr. Hussey appeared, to contest the extension of McCormick's patent. And on examination of the records of the Patent Office, and a comparison of the two patents, it appeared they both covered one or more features substantially identical in principle, but not the same precise combinations. And inasmuch as Mr. Hussey's patent bore date before McCormick's, the board decided that he was *prima facie* the inventor of the feature, or rather claim, which conflicted. But Mr. McCormick contended that he invented the part of the machine embraced in both patents, one or two years before Hussey obtained his patent, and was, in fact, the first and original inventor; and he prayed for a continuance of the hearing until he could take testimony upon that point to sustain his right.

"His request was granted, and he was ordered to take testimony, with due notice to Mr. Hussey.

"He complied with the orders of the board; but on an examination of the testimony on the next day of hearing, it was found to have been informally taken, and therefore ruled out.

"Mr. McCormick subsequently made efforts to supply the defects, but never did satisfactorily to the board, and they declined extending his patent. Such is a brief history of the proceedings before the board of extension on McCormick's application.

"I will now give my views with regard to the merits of the invention itself. I do not hesitate to say that it is one of very great merit. In agriculture, it is in my view as important, as a labor-saving device, as the spinning-jenny and power-loom in manufactures. It is one of those great and valuable inventions which commence a new era in the progress of improvement, and whose beneficial influence is felt in all coming time; and I do not hesitate to say, that the man whose genius produces a machine of so much value, should make a large fortune out of it. It is not possible for him to obtain, during the whole existence of the term of his patent, a tenth part of the

value of the labor saved to the community by it in a single year. Therefore I was in favor of its extension.

"There were, however, other reasons which induced me to favor its extension. One was the fact that the machine was one which could be used only a few weeks in each year. Therefore, for want of an opportunity to test it, its perfection must be a work of time and tediousness. It is not like the steam-engine and other machines in common use, upon which improvements may be at any time tested. Therefore the invention and perfection of a reaping-machine must be a work of slow progress. And such was the case with McCormick's machine. He was many years experimenting upon it before he succeeded in making a machine that would operate, as the testimony before the board (although informal) clearly proved. In the next place, it is a machine which was difficult to introduce into public use. It was imperfect in its operation at first. It had to encounter the prejudices and the doubts and fears of agriculturists. And it appeared, in proof, that Mr. McCormick was not able to sell but very few machines until two or three years before the expiration of his first patent, which covered the leading original principles of his invention. Under that patent he never received anything like an adequate compensation for the really great invention which he had produced. And I now repeat, what I have always said, that his patent should be extended. With regard to the conflicts of rights and interest between him and Mr. Hussey, it is proper for me to remark, that when both of these patents were granted, the Patent Office made no examination upon the points of originality and priority of invention, but granted all patents applied for, as a matter of course. Therefore, it is no certain evidence that, because an alleged inventor procured a patent before his rival, he was the first and original inventor. It, in fact, was a circumstance of very little weight in its bearing upon the question of priority between the parties. Besides, the testimony of Mr. McCormick, presented to the board of extension, clearly proved that he invented and put in operation his machine in 1831, two years before the date of Hussey's patent.

"But my opinion is, that justice will be best subserved by extending the patents of both parties. Their claims are not in all respects identical, but both include features and combinations which would entitle either of them to a patent, if he were to strike out of his patent all that the other claimed. Besides, if these patents were extended, they could then settle their respective rights in a court of law if they should so elect.

"I again repeat that, in my judgment, McCormick's patent should be extended. That was my opinion when the matter was before the board of extension, and it has never changed.

"McCormick has two other patents for improvements upon his machine, the last of which expires in 1861. They all relate to the same machine, and there would be great propriety in extending his first and second patents to the date of the expiration of his third and last one. This would, in fact, consolidate the invention, and secure his just rights. Mr. Hussey's patent could be extended to the same date, and thus the rights of both would be secured. They are both

meritorious inventors, and have produced machines of great value, but for which they have not been able to secure an adequate remuneration because their machines are adapted to use only for a very small portion of the season.

"I have the honor to be, respectfully, your obedient servant,

"EDMUND BURKE.

"Hon. STEPHEN A. DOUGLAS,
"Hon. JAMES SHIELDS,
"United States Senate."

That upon the denial of the extension by the board, the petitioner made his application to Congress on the 10th day of April, 1848, being about *two months previous to the expiration of his patent.*

Besides the patent granted June 21, 1834, to Mr. McCormick, and which expired June 21, 1848, he procured, January 31, 1845, a *second* patent for an improvement in his said machine, which patent will expire January 31, 1859. On the 23d of October, 1847, he obtained a *third* patent for further improvements in said machine, which last patent will expire on the 23d day of October, 1861. (Vide patents, documents A, B, and C.) Of the utility and value of his invention the proof submitted, it is presumed, will be regarded as ample. From a large mass of testimonials touching this point, it is deemed necessary only to refer to the following:

Award of the Michigan State Agricultural Society, for best reaper, a silver medal and ten dollars. December, 1851.

Award of the Mechanics' Institute, Chicago, Illinois, gold medal. October, 1851.

Award of the Franklin Institute, Philadelphia, Pennsylvania, first premium. 1851.

Award of the Pennsylvania State Agricultural Society, first premium and ten dollars. January, 1852.

Award of the State Agricultural Society of Wisconsin, first premium. 1851.

Award of the New York State Agricultural Society, gold medal. January, 1852.

Award of the World's Fair, London, "Council Medal." 1851.

Mr. Pusey, M. P., one of the committee on trial of this reaper for the council medal, at the great Industrial Exhibition, states, in the journal of the Royal Agricultural Society, that it is "the most important addition to farming machinery that has ever been invented since the threshing-machine took the place of the flail." In the final report of Mr. Pusey, who was chairman of the committee on agricultural implements, to the royal commission, he also says:

"As to the practical working of the reaper, two horses drew it at the trial very easily round the outside of the crop until they finished in the centre, showing that they could cut easily fifteen acres in ten hours. One man drives sitting, and another stands on the machine to rake. It is hard work for him, and the men ought sometimes to change places.

"The straw left behind at the trial was cut very regularly, lower than by reaping, but higher than by bagging. The inventor stated

that he had a machine which would cut it two inches lower. This is the point, I should say, to attend to, especially for autumn cleaning.

"Though it seems superfluous to bring this machine to the test of economy, we may estimate the present cost of cutting fifteen acres of wheat, at an average of 9*s.* per acre, to be £6 15*s.* Deduct for horses and men 10*s.* 3*d.*, and for binding 2*s.* 6*d.* per acre, and the account will stand thus:

"Average cost of reaping 15 acres, at 9*s*.....		£6	15 0
"Horses and men for reaper.....	£0 10 0		
"Binding crops, 2*s.* 6*d.* per acre.....	1 17 6		
		2	7 6
"Saving, per acre 5*s.* 10*d*.....		£4	7 6

"The saving in wages, however, would of course be an imperfect test of the reaper's merits, since in bad seasons and late districts it may often enable the farmer to save the crop."

In reference to a subsequent trial, Mr. Pusey remarks:

"Mr. McCormick's in this trial, worked—as it has since worked at Cirencester (Agricultural) College, and elsewhere—*to the admiration of practical farmers, and therefore received a council medal.*"

Notwithstanding so important a revolution in husbandry as this machine effected, and its manifest utility, still its introduction into use appears to have been surrounded with difficulties. The inventor was obliged to offer full guarantees for its satisfactory performance to the farmer in every instance of sale, thereby assuming the entire risk. (Vide terms of sale, marked 16.)

The perfecting of the invention, in its practical details, seems to have required patient study, critical observation, and persevering trials. In 1834 its main features were patented, defects were found to exist, and the result of one experiment for the remedy could only be ascertained during one harvest.

It was found that the cutting features could not be relied upon in all cases until further improvements were made, as described and patented in January, 1845. From June 21st, 1834, (date of the first patent,) and for ten years after the invention in 1831, and until the improvements were made as secured by the patent of 1845, he appears to have derived little or no profit from his reaper, but spent much time, money, and labor in improving it so as to make it profitable to himself and available to the public. Upon its introduction to the heavy wheat of the prairies, other important improvements were found necessary in order to safely introduce it. They were accordingly made, and embraced in the *third* patent, granted October 23d, 1847.

From the statement before the board of extension, and submitted to your committee in 1848, it appears that—

In 1841 he sold	2	machines.	
In 1842 "	7	"	
In 1843 "	29	"	
In 1844 "	50	"	
In 1845 "	50	"	

In 1846 he sold 190 machines.
In 1847 " 450 "

Making..... 778 machines in the whole. On the machines he received an average of $20 each for his patent right, making $15,560 on the sales of his machines, and on the sales of territory about $7,083; making in the whole $22,643. His expenses he is unable to give in detail, but estimates his time and labor, advertisements, hire of agents, &c., at " several thousand " dollars. (Vide document U.)

This report might, perhaps, properly stop here, but for remonstrances received against the extension prayed for, on the ground that the inventor is supposed to have realized a large profit from the machine. How far these opinions may be correct does not appear to your committee. Profits made by the manufacture and sale of the machines, *since the expiration* of the patent of 1834, cannot have been derived from that patent. Besides, in proportion to the number of machines sold, have advantages resulted to the public from this invention, and to a much greater extent than to the inventor; and it would seem that, having done something for himself, while doing much for the country, his claims to the extension of the first patent, under which he failed to realize adequate remuneration, in accordance with the provisions of the law, should not be less than if he had done nothing for either.

IN THE HOUSE OF REPRESENTATIVES—*February*, 23, 1855.

A BILL for the relief of Cyrus H. McCormick.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Commissioner of Patents be, and he is hereby, authorized and empowered to receive the application of Cyrus H. McCormick, a citizen of the United States, for a rehearing of his application for a renewal of his letters patent for new and useful improvements in the machine for reaping all kinds of small grain, dated June twenty-one, eighteen hundred and thirty-four, made to a former Commissioner of Patents in his petition to said Commissioner, setting forth the grounds therefor, and sworn to on the first day of January, eighteen hundred and forty-eight, according to law. And the said Commissioner of Patents is hereby authorized, directed, and required, upon such application being made to him as aforesaid, if made within three months from the passage of this act, to cause public notice to be given of the time and place of hearing and considering the same, and to grant or refuse a renewal and extension of said letters patent for the term of fourteen years from the expiration of the same, in the same manner and upon the same principles as they might have been extended for the term of seven years on said former application: *Provided, however*, That all persons now enjoying the lawful use of any machines or improvements protected by the said letters patent of the said Cyrus H. McCormick, and the purchasers of any such machines or improvements so in use, or lawfully constructed, if, and when, said Commissioner

shall renew said patent as aforesaid, may continue to use the same, notwithstanding the provisions of this act: *And provided, also,* That if, upon such renewal and extension of said patent as aforesaid, it shall be found to be too broad in its claims, the same may, to that extent, be disclaimed by entering a disclaimer in the usual form at the Patent Office, on payment of the usual fees therefor.

34th CONGRESS, 1st Session. } HO. OF REPRESENTATIVES. { REPORT C. C. No. 12.

WILLIAM W. COX.

MAY 16, 1856.—Reported from the Court of Claims. Committed to a Committee of the Whole House, and ordered to be printed.

WILLIAM W. COX *vs.* THE UNITED STATES.

To the honorable Senate and House of Representatives of the United States:

The Court of Claims respectfully present the following report in the case of William W. Cox *vs.* The United States:

1. The petition of the claimant filed in the Court of Claims.
2. The amended petition.
3. The opinion of the court on both petitions. No briefs were filed in the case.

By order of the court.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court, at Washington, this first day of April, A. D. 1856.

[L. S.]

SAMUEL H. HUNTINGTON,
Chief Clerk Court of Claims.

To the honorable Court of Claims of the United States sitting in Washton, D. C.:

Your petitioner, William W. Cox, of the said city, respectfully represents: That from the 5th of July, 1836, to the 15th of November, 1849, he was the principal messenger in the office of the Sixth Auditor of the Treasury, being the auditor for the Post Office Department, at the moderate salary of $750 per annum. That during his said term of service, in addition to the full and faithful discharge of the duties properly appertaining to his said position, he performed various other services of a useful and important character, for which he is advised that he is entitled to compensation, but for which he has never received any allowance whatever. These extra services were rendered, in the performance of his ordinary duties, on Sundays, in acting as a watchman, after business hours in the day, and in clerical services in keeping books and accounts of several kinds; all of which are distinctly set forth in the bill of particulars, filed with his papers in the House of Representatives, and amounting to the sum of $3,339 04.

Your petitioner alleges that the extra services aforesaid have not been performed by other messengers without extra compensation; and

that, according to the letter and spirit of the 11th section of the act passed at the second session of the twenty-seventh Congress, chapter 202, he is fairly and legally entitled to the allowance claimed.

In proof of the facts stated, as well as the views of the government, your petitioner refers to the statements of William F. Phillips, Auditor, Elisha Whittlesey, present Comptroller, and P. G. Washington, Assistant Secretary of the Treasury; all of which are on file with his papers in the House of Representatives, and establish the justice of the present demand beyond any doubt, as your petitioner verily believes.

Your petitioner further states that he is the sole owner of the claim herein presented, no other person being interested in the same; that he presented his petition to the Senate of the United States on the 17th February, 1852, when the same was referred to the Committee on the Post Office and Post Roads. No action was taken in the Senate, because the said committee were unanimously of opinion that the demand "ought to be paid at the treasury, and was not a subject for their action," as will appear by reference to the endorsement on the said original account or bill of particulars. The claim was not paid at the treasury, because there was no appropriation by law applicable to this subject. Therefore, on the 9th of February, 1854, the case was presented to the House of Representatives, and referred to the Committee of Claims; but, so far as petitioner knows, no action was taken by the said committee of the House, but the papers remain with the Clerk thereof. These were the only applications made to Congress.

In consideration of the premises, and inasmuch as this, with all other claims pending in the House of Representatives at the close of the late Congress, has been referred to the court, your petitioner prays that it may be examined, and reported to Congress for appropriation and payment.

FRED. P. STANTON,
Attorney for Petitioner.

DISTRICT OF COLUMBIA, *City of Washington:*

Before me, Paul Stevens, a justice of the peace in and for the District aforesaid, personally appeared William W. Cox, the foregoing petitioner, and in due form of law made oath that the facts stated in the foregoing petition are true, to the best of his knowledge and belief.

Sworn to before me.

PAUL STEVENS, *J. P.*

JULY 2, 1855.

WILLIAM W. COX
vs.
THE UNITED STATES. } *Amended petition.*

By leave of court first had and obtained, the said W. W. Cox, in

amendment of his original petition, states that the extra services for which he claims compensation were done and performed at the request of the Sixth Auditor of the Treasury, and with the understanding that the said extra services would be paid for as such. The gentlemen who successively occupied the place of Sixth Auditor, from 1836 down to 1849, were Messrs. C. K. Gardner, E. Whittlesey, P. G. Washington, M. St. Clair Clarke, and again P. G. Washington. Your petitioner expressly avers that all these gentlemen, in their official capacity of Sixth Auditor, at the times when they were respectively so acting, admitted the justice of your petitioner's demand, and some of them recommended its payment. And your petitioner expressly denies that his said services were given as a voluntary courtesy, or were so understood and received by the several officers aforesaid, or by any one of them. Your petitioner expressly alleges his belief, and so charges, that the orders, acts, and admissions of the several officers aforesaid, in the matter of this claim, were done and made by authority of each Auditor, acting under and for the Secretary of the Treasury, and were and are lawful and binding upon the United States.

Your petitioner further states that his said services were and are so plainly above and beyond the sphere of his duties as messenger, that the present Secretary of the Treasury has, for more than two years past, allowed and paid him an extra compensation of two hundred and fifty dollars per annum for the continued performance of only a part of said extra services. This is an official admission of the fact; but your petitioner will otherwise most satisfactorily prove the nature and value of these extra services, if so required by the court.

In consideration of the premises, your petitioner prays relief, as in his original petition.

BROWN, STANTON & WALKER,
For the Claimant.

WILLIAM W. COX *vs.* THE UNITED STATES.

The opinion of the Court was delivered by Judge Blackford.

In this case the claimant demands compensation of the United States for work and labor. The work is alleged to have been performed from the 5th of July, 1836, to the 15th of November, 1849, in the office of the Auditor of the Treasury for the Post Office Department. The charge is at the rate of $250 a year, and amounts to $3,339 04. The claimant was, during the whole time, principal messenger in said Auditor's office, with a salary of $750. The demand is for extra services; that is, for services not belonging to the claimant's office of messenger.

We shall not stop to inquire whether the services charged for were or were not extra services. The case can be decided without making that inquiry. Assuming, therefore, that the services were such as are usually denominated extra, our opinion is, that the petition contains no cause of action.

The act of Congress establishing said Auditor's office was passed in 1836. That office is made by the act a branch of the Treasury Department, of which department the Secretary of the Treasury is the head. This act of 1836 gives no authority to any person to employ the messengers in said Auditor's office to perform extra services; nor was there at that time any other act existing from which such authority could be inferred.

The law relied on by the claimant as authorizing a contract for his extra services is the 11th section of the act of 1842. That section is as follows: "It shall be the duties of the Secretaries of State, of the Treasury, War, and Navy, &c., to report to Congress, at the beginning of each year, the names of the clerks and other persons that have been employed, respectively, during the preceding year, or any part thereof, in their respective departments and offices, together with the time that each clerk or other person was actually employed, and the sums paid to each; and also, whether they have been usefully employed; whether the services of any of them can be dispensed with without detriment to the public service; and whether the removal of any individuals, and the appointment of others in their stead, is required for the better despatch of business; and no greater allowance shall be made to any such clerk or other person than is or may be authorized by law, except to watchmen and messengers, for any labor or services required of them beyond the particular duties of their respective stations, rendered at such times as does not interfere with the performance of their regular duties."—5 Stat. at Large, p. 525.

The next section (the 12th) of the same act says: "No allowance or compensation shall be made to any clerk or other officer, by reason of the discharge of duties which belong to any other clerk or officer in the same or any other department; and no allowance or compensation shall be made for any extra services whatever which any clerk or other officer may be required to perform."

Whether this 12th section repeals the said 11th section, so far as regards watchmen and messengers, on the ground of repugnancy, is a question which need not now be decided. We refer to this 12th section merely to show that it has not been overlooked; and we shall proceed to consider the case as if that section were not in the act.

The said 11th section of the act of 1842, relied on by the claimant, being prospective only, can have no effect on the extra services rendered previously to that act. The services, therefore, from 1836 until 1842, and numbered one and two in the bill of particulars, may, without further notice, be laid out of the case. The residue of the charges in the bill of particulars are designated therein as clerical services.

The said 11th section permits the employment of messengers to perform extra services, but it is silent as to the person who shall have authority to employ them. The services under consideration, termed clerical by the claimant, are alleged to have been performed by him in the office of the Auditor of the Treasury for the Post Office Department. That Auditor's office is, as before stated, a branch of the Treasury Department. The law creating that office contains the following provision: "There shall be employed by the Secretary of the Treasury, in the office of the Auditor for the Post Office Department,

one chief clerk, four principal clerks, and thirty-eight other clerks, one messenger and one assistant messenger, &c.—(5 Stat. at Large, p. 84, section 21.) The Secretary of the Treasury being the head of the department to which said Auditor's office is attached, and having the exclusive authority to appoint the clerks and messengers of that office, and being required, as said 11th section of the act of 1842 shows, to report to Congress every year the name of every person employed in said office, and the time he was employed, and the sum paid to him, it appears to us that he, the Secretary of the Treasury, was the proper person to contract for such extra services as those in question, if he deemed them to be necessary.

We are next to inquire whether the petition shows that the Secretary of the Treasury contracted with the claimant for any of the services charged for, after the passage of said act of 1842. There must be such a contract, either express or implied, or there is no cause of action. There was no express contract; that is, there was no contract where the terms of it were openly uttered and avowed by the parties. We must, therefore, see whether the petition sets out circumstances from which the law will imply a contract between the Secretary of the Treasury and the claimant for the performance of the work.

The only circumstances stated on the subject are, that part of the work was performed by the claimant under the direction of the Auditor or chief clerk, and that the performance of some other part was reported by the claimant to the Auditor. As to the residue of the services, no person is named as having any knowledge of their performance. Those circumstances are insufficient. It does not even appear from them that the Secretary of the Treasury, who was the only person competent to make the contract, had any such knowledge of these extra services, during their performance, as would justify an implication that he had requested the claimant to perform them.

The case therefore is simply this: The claimant being a messenger in said Auditor's office, performed there extra clerical services, subsequently to the said act of 1842, without the request, express or implied, of any agent of the government authorized to employ him. Such service, so performed, is nothing more than what is known to the law as a voluntary courtesy. No principle is better settled, as regards individuals, than that mere voluntary favors are no ground for a suit, either at law or in equity. "It is unreasonable," says a great lawyer, "that one man should do another a kindness, and then charge him with a recompense. This would be obliging him whether he would or not, and bringing him under an obligation without his concurrence."—Osborne *vs.* Rogers, 1 Saunders' Rep., p. 372; note by Sergeant Williams.

This doctrine has been recognised by this court in the late case of McElderry *vs.* the United States. And we hold, as we held in that case, that the doctrine applies to the government as well as to individuals.

We are, therefore, of opinion that the facts set forth in the petition do not furnish any ground for relief.

After the above opinion was delivered, the following amendment to the petition was filed:

IN THE COURT OF CLAIMS OF THE UNITED STATES.

WILLIAM W. COX
vs.
THE UNITED STATES. } *Amended petition.*

By leave of court first had and obtained, the said W. W. Cox, in amendment of his original petition, states that the extra services for which he claims compensation were done and performed at the request of the Sixth Auditor of the Treasury, and with the understanding that the said extra services would be paid for as such. The gentlemen who successively occupied the place of Sixth Auditor, from 1836 down to 1849, were Messrs. C. K. Gardner, E. Whittlesey, P. G. Washington, M. St. Clair Clarke, and again P. G. Washington. Your petitioner expressly avers that all these gentlemen, in their official capacity of Sixth Auditor, at the times when they were respectively so acting, admitted the justice of your petitioner's demand, and some of them recommended its payment; and your petitioner expressly denies that his said services were given as a voluntary courtesy, or were so understood and received by the several officers aforesaid, or by any one of them. Your petitioner expressly alleges his belief, and so charges, that the orders, acts, and admissions of the several officers aforesaid, in the matter of this claim, were done and made by authority of each Auditor, acting under and for the Secretary of the Treasury, and were and are lawful and binding upon the United States.

Your petitioner further states, that his said services were and are so plainly above and beyond the sphere of his duties as messenger that the present Secretary of the Treasury has, for more than two years past, allowed and paid him an extra compensation of two hundred and fifty dollars per annum for the continued performance of only a part of said extra services. This is an official admission of the fact; but your petitioner will otherwise most satisfactorily prove the nature and value of these extra services, if so required by the court.

In consideration of the premises, your petitioner prays relief, as in his original petition.

BROWN, STANTON AND WALKER,
For the Claimant.

This amendment does not affect the case. The petition, with the amendment, does not show any express contract by the Secretary of the Treasury for the extra service; nor does it set out any circumstances from which the law will imply a contract by the Secretary for the extra service. The fact that the extra work was done by authority of each Auditor, acting under and for the Secretary of the Treasury, does not authorize us to say that the Secretary of the Treasury employed or authorized the claimant to perform the extra service.

The statement that the present Secretary of the Treasury has, for more than two years past, allowed and paid the claimant an extra compensation for the continued performance of only a part of said

extra service, merely shows that the present Secretary considers that he is the proper person to make such contracts; and that accords with our opinion of the law.

We are of opinion that the facts set forth in the petition and amendment do not furnish any ground for relief.

34th CONGRESS, 1st Session. } HO. OF REPRESENTATIVES. { REPORT C. C. No. 13.

SALVADOR ACCARDI.

[To accompany bill H. R. C. C. No. 4.]

MAY 16, 1856.—Referred to the Committee of Claims.
MAY 23, 1856.—Ordered to be printed.

The COURT OF CLAIMS made the following

REPORT.

SALVADOR ACCARDI *vs.* THE UNITED STATES.

To the honorable the Senate and House of Representatives of the United States in Congress assembled:

The Court of Claims respectfully presents the following documents as the report in the case of Salvador Accardi *vs.* The United States.

1. The petition of the claimant presented to the Court of Claims.
2. Claimant's petition to Congress referred to the Court of Claims by the House of Representatives, and returned to that House.
3. Other documents in support of the claim, referred by the House of Representatives to the Court of Claims, and returned to the House of Representatives.
4. Opinion of the court.
5. Bill for the relief of the claimant.

By order of the Court of Claims.

In testimony whereof, I have hereunto set my hand and affixed the [L. S.] seal of said court, at Washington, this 7th day of May, A. D. 1856.

SAM'L H. HUNTINGTON,
Chief Clerk Court of Claims.

To the Honorable the Court of Claims:

The petition of Salvador Accardi respectfully represents: That he is a citizen of the United States, and that he entered the naval service thereof in the year 1830, as a musician, and has been in the navy, in different vessels, with but short intervals, ever since—amounting to about eighteen years' service, as will appear by the rolls in the Navy Department; that your petitioner was slightly lame in his left leg when he entered the service, but not so as to prevent his passing the examination and being received into the service, or to interfere with

the performance of all his duties, until he received an injury whilst taking his hammock below, then in the line of his duty on board the United States ship Independence, in the year 1852; that the injury thus received has disabled him from duty ever since; and, after having been discharged from the naval service in July, 1852, he was wholly unable to provide for himself, and, as a favor, he was admitted to the Infirmary, in Washington, where his limb was amputated above the knee, and he is now left helpless. That because of the original lameness, as stated above, he is unable to obtain from the medical officer of the said ship the necessary certificate to authorize his being placed on the pension-roll; that he therefore presented his memorial to the thirty-third Congress, praying that his name might be placed on the invalid pension list with such pension as the law grants in cases of like disability; that on the 24th day March, 1854, his memorial was referred in the House of Representatives to the Committee on Invalid Pensions; that on the 2d day of February, 1855, said committee presented a favorable report, (No. 65,) accompanying the House bill No. 719, directing the name of your petitioner to be placed upon the roll of invalid pensioners, and to be paid a pension at the rate of six dollars per month, from the first day of January, 1854; that said bill was read twice, and committed to the Committee of the Whole House; and that on the 3d day of March, 1855, your petitioner's memorial was referred to the Court of Claims. Your petitioner, therefore, respectfully prays your honors to take his case into consideration, and to make such disposition of it as the law provides; and, as in duty bound, your petitioner will ever pray.

Dated at Washington this 5th day of October, A. D. 1855.

SALVADOR ACCARDI.

CITY AND COUNTY OF WASHINGTON,
District of Columbia:

On this fifth day of October, 1855, before me personally appeared Salvador Accardi, and made oath that the foregoing petition, signed by him, is true according to his best knowledge and belief.

Sworn before me.

E. H. BATES, *J. P.*

To the honorable the Senate and House of Representatives in Congress assembled:

Your memorialist, Salvador Accardi, humbly represents, that he entered the naval service of the United States in 1830, as a musician, and has been in the navy in different vessels, with but short intervals, ever since, amounting to about eighteen years' service, as will appear by the rolls in the Navy Department; that your memorialist was slightly lame in his left leg when he entered the service, but not to his detriment, or disability to prevent his passing the examination and being received into the service, or from performing his duty ever since, until he received an injury whilst taking his hammock below, then in

the line of his duty on board the United States ship Independence, near Gibraltar, in the year1852; that the injury thus received has disabled him from duty ever since; and after having been discharged from the naval service soon after that ship's return to New York, in July, 1852, he was wholly unable to provide for himself, and, as a favor, was admitted to the Infirmary in Washington, where his limb was amputated, and he is now left with one leg; that because of the original lameness as stated above, he is unable to obtain from the medical officer of said ship the necessary certificate to authorize his being placed on the pension roll, and therefore respectfully asks that Congress will direct his name to be placed on the pension list, for such pension as, upon examination, the law grants in cases of like disability; and, as in duty bound, will ever pray, &c.

SALVADOR ACCARDI.

WASHINGTON, D. C., *January* 28, 1854.

NORFOLK, VA., *March* 7, 1854.

SIR: In reply to your letter, I have to state that you were shipped on board the United States ship Mississippi, during her recent cruise in the Mediterranean under the command of Captain Long, as a musician, and that you served as such until her departure from that sea for the United States. When shipped, you were not passed or examined by a medical officer; but I know at that time you had a stiff leg, which disqualified you for the performance of any duty except that of a musician, which duty I believe you performed during the cruise.

If you were on the sick list at all, it was only for some temporary indisposition.

The precise time when you shipped, and when discharged, may be ascertained by referring to the muster-rolls of the ship.

I am, respectfully, your obedient servant,

GEO. BLACKNALL,
Surgeon U. S. Navy.

Mr. SALVADOR ACCARDI,
Washington, D. C.

NAVY DEPARTMENT,
Bureau of Medicine and Surgery, March 14, 1854.

Salvador Accardi, late musician in the United States navy, was transferred from the United States ship Mississippi to the United States ship Independence in the harbor of Spezzia, Italy, in October, 1851, and served on board till the ship was paid off in New York in July, 1852, when, in consequence of an injury sustained during the passage home, he was transferred to the naval hospital, New York.

Accardi was lame of the left knee when he joined the Independence, but performed all the duties required of him, as he had previously on board the Mississippi, till a fall down one of the hatchways produced

an ulceration of some old scars about the knee-joint, for which he was sent to the naval hospital, New York.

I was surgeon of the Independence at the time of Accardi's accident, and it was by my request he was transferred to the New York hospital.

W. WHELAN,
Chief Bureau Medicine and Surgery.

U. S. SHIP OHIO,
July 26, 1841.

This is to certify that Salvador Accardi has served under my command as a musician in the band on board this ship for a period of thirty months, during which time he has conducted himself to my satisfaction, and I can confidently recommend him as a good musician, and consider him perfectly competent to teach music.

E. A. F. LAVALLETTE,
Commanding U. S. ship Ohio.

U. S. SHIP OF THE LINE OHIO,
Boston, August 3, 1841.

This is to certify that No. 1142, Salvador Accardi, 1st class musician, is this day discharged from on board the United States ship Ohio, and from the naval service of the United States, his term of service having expired.

WM. SINCLAIR, *Purser.*

E. A. F. LAVALLETTE, *Captain.*

NORFOLK, *March* 28, 1845.

This is to certify that Salvador Accardi, 1st class musician, is regularly discharged from the United States ship Congress, and from the sea service of the United States.

BENJ. J. CAHOONE,
Purser.

U. S. SHIP PRINCETON,
July 21, 1845.

This certifies that Salvador Accardi (band) has been regularly discharged from the naval service of the United States.

WM. A. CHRISTIAN,
Purser.

By order of
F. EAGLE, *Commander.*

SPEZZIA, *September* 24, 1851.

This is to certify that No. 211, Salvador Accardi, a 1st class musician, has this day been discharged from the United States frigate Mississippi, and from the naval service of the United States, at his own request.

HENRY ETTING,
Purser.

Approved:
J. C. LONG, *Captain.*

SEPTEMBER 22, 1852.

This is to certify that No. 171, roll No. 3, Salvador Accardi, a 1st class musician, has this day been discharged from the United States receiving ship North Carolina, and from the naval service.

BENJ. J. CAHOONE,
Purser.

Approved:
H. WALKE, *Commanding Officer.*

NAVY YARD, WASHINGTON, D. C.,
March 1, 1854.

I hereby certify that Salvador Accardi served with me on board the United States frigate Congress, on the Pacific station, for more than three years. That during that time he discharged the duties of first class musician, and that his lameness did not interfere with the duties of his vocation, nor did his leg require surgical treatment.

CHARLES EVERSFIELD,
Passed Assistant Surgeon, U. S. N.

IN THE HOUSE OF REPRESENTATIVES.—*February* 2, 1855.

Mr. HENDRICKS, from the Committee on Invalid Pensions, made the following report:

The Committee on Invalid Pensions, to whom was referred the petition of Salvador Accardi, asking for pension, find that he entered the naval service in 1830, and remained there, as musician, for eighteen years; that while in the line of his duty he received an injury, from the effects of which his leg had to be amputated, and he is thus debarred from labor that would enable him to provide for himself.

Your committee, therefore, respectfully report a bill allowing him a pension of six dollars per month, and recommend its passage.

A BILL for the relief of Salvador Accardi.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Interior be, and he hereby is, directed to place the name of Salvador Accardi upon the roll of invalid pensioners, and that said Accardi be paid a pension at the rate of six dollars a month from the first day of January, in the year one thousand eight hundred and fifty-four.

The opinion of the court was delivered by Chief Justice Gilchrist.

This case comes before us by a resolution of the House of Representatives, and is submitted to us by consent upon the evidence referred to us by the House.

The petitioner entered the naval service in the year 1830, and served for a period of eighteen years at various times, and in different vessels. He was regularly discharged as his successive terms of enlistment expired—his last discharge bearing date on the 22d of September, 1852. He performed the duties of a first-class musician, and is so described in his last discharge. A strong testimonial to his character is borne by Captain Lavallette, who certifies, under the date of July 26, 1841, that the petitioner served as a musician on board the Ohio, under his command, for a period of thirty months, during which he conducted himself to Captain Lavallette's satisfaction, and he says, "I can confidently recommend him as a good musician, and consider him perfectly competent to teach music."

In relation to the disability of the claimant, Dr. Whelan, the chief of the Bureau of Medicine and Surgery in the Navy Department, states, under date of March 14, 1854, as follows:

"Salvador Accardi, late musician in the United States navy, was transferred from the United States ship Mississippi to the United States ship Independence, in the harbor of Spezzia, Italy, in October, 1851, and served on board till the ship was paid off in New York in July, 1852, when, in consequence of an injury sustained during the passage home, he was transferred to the naval hopital, New York.

Accardi was lame of the left knee when he joined the Independence, but performed all the duties required of him, as he had previously on board the Mississippi, till a fall down one of the hatchways produced an ulceration of some old scars about the knee-joint, for which he was sent to the naval hospital, New York.

"I was surgeon of the Independence at the time of Accardi's accident, and it was by my request he was transferred to the New York hospital."

Under date of March 1, 1854, Dr. Eversfield, of the navy, certifies as follows:

"I hereby certify that Salvador Accardi served with me on board the United States frigate Congress, on the Pacific station, for more than three years; that during that time he discharged the duties of first class musician; and that his lameness did not interfere with the duties of his vocation, nor did his leg require surgical treatment."

The surgeon of the New York hospital, under date of September 20, 1852, states that the lameness of the petitioner was occasioned "by a fall from a horse sixteen years ago."

The injury which resulted in the amputation of his leg, as he states, and as there is no reason to doubt, was received while he was taking his hammock below in the line of his duty on board the Independence.

The 11th section of the act of July 1, 1797, (1 Stat. at Large, 525,) provides that "if any officer, non-commissioned officer, seaman, or marine, belonging to the navy of the United States, shall be wounded or disabled while in the line of his duty in public service, he shall be placed on the list of the invalids of the United States at such rate of pay and under such regulations as shall be directed by the President of the United States." This act was to continue in force for the term of one year, and from thence to the end of the next session of Congress. The 8th section of the act of April 23, 1800, (2 Stat. at Large, 53,) enacts that every officer, seaman, and marine, disabled in the line of his duty, shall be entitled to receive for life, or during his disability, a pension from the United States according to the nature and degree of his disability, not exceeding one-half his monthly pay.

The questions are, whether the disability happened to the claimant in the line of his duty, and whether the fact that, at the time of the accident, he already had a lameness in his kee should deprive him of the pension to which otherwise the disability might entitle him.

Mr. Attoney General Wirt, in his letter of March 31, 1825, says, that the *line of duty* "extends to all the operations of the ship, whether civil or military, and takes in the whole of her navigation during the entire cruise." The criterion established by Mr. Attorney General Cushing, in his elaborate and investigating inquiry into the subject, contained in his letter of the 17th of May, 1855, is this:

"Was the cause of disability, or death, a cause within the line of duty, or outside of it? Was that cause appertaining to, dependent upon, or otherwise necessarily and essentially connected with duty within the line, or was it unappurtenant, independent, and not of necessary and essential connexion?"

Tried by this test, the disability in the present case was clearly in the line of the claimant's duty. It is a part of the regular duty of every seaman to take his hammock below at stated periods. Of course, a disability which occurs while the seaman is thus employed, happens in the line of duty.

We do not see that the fact of the lameness of the claimant's knee can have any effect upon his right to a pension. There is nothing to show that the amputation of his leg is traceable to the lameness. The condition of his knee might have rendered the affected parts more sensitive to injury. "Without getting embarrassed," to use Mr. Cushing's language, "in the question of the distinction between *causa proxima* and *causa remota*," there is no reason for supposing that he would have lost his leg had it not been for the fall down the hatchway. There is every reason to believe that he might have continued to perform his duty satisfactorily for an indefinite period, as he had done for sixteen years before under various enlistments. His duty was that of a musician; he was not called upon to go aloft, or under

ordinary circumstances to aid in working the ship. We do not understand that the Pension Office would have required him to be free from any and every physical defect which might by possibility have rendered him more liable to meet with accidents. Upon this point we have received a communication from the Pension Office, of which the following is a part:

"With regard to the abstract question, whether the fact of enlistment while laboring under disability should bar a claim to a pension, under any circumstances which might thereafter arise, it may be remarked that such a view could not be sustained by the practice of the navy, the rules of this office, or the opinion of the Attorney General. Under the regulations of the Navy Department, it is presumed that every recruit who offers undergoes a rigid medical examination, and if found to labor under any defect, physical or mental, is rejected. But it is well known that the rule has not been rigidly adhered to, probably on account of the meritorious character of the applicants, or because the peculiar nature of their disabilities did not unfit them for the particular duty to which they were assigned. Cases have not unfrequently occurred where pensioners have re-enlisted into the naval service, thereby forfeiting their pension; and after being discharged, have, upon making proof of the continuance of their original disability, been restored to the pension list." But even if that should have been required, as Mr. Cushing properly says, "decisions in the public offices of the government are *de facto* not rules of law;" and we should agree with Mr. Cushing's further remark, "that the pension laws are beneficial in their nature, and therefore to be construed beneficially in matters of inevitable doubt."

As the petitioner makes no claim to a pension commencing at an earlier date than the time of the completion of his proof, the question does not arise, whether it should commence at that time or at the time of his discharge from the service, or of the happening of his disability. We think him entitled to a pension, and herewith report a bill, giving him a pension from the 14th of March, 1854, the time of the completion of his proof.

A BILL for the relief of Salvador Accardi.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Interior be, and he hereby is, directed to place the name of Salvador Accardi upon the roll of invalid pensioners, and that the said Accardi be paid a pension, at the rate of six dollars per month, commencing from the fourteenth day of March, one thousand eight hundred and fifty-four.

34th CONGRESS, 1st Session. } HO. OF REPRESENTATIVES. { REPORT C. C. No. 14.

JOHN ROBB.

[To accompany bill H. R. C. C. No. 5.]

MAY 16, 1856.—Referred to the Committee of Claims.
MAY 23, 1856.—Ordered to be printed.

The COURT OF CLAIMS made the following

REPORT.

JOHN ROBB *vs.* THE UNITED STATES.

To the honorable the Senate and House of Representatives of the United States in Congress assembled:

The Court of Claims respectfully presents the following documents as the report in the case of John Robb *vs.* The United States:

1. The petition of the claimant.
2. Certificate of the Secretary of State, showing the dates of the appointments of the claimant, as acting Secretary of War.
3. Certificate of the Secretary of the Treasury, showing how long the claimant so acted.

These two certificates are transmitted to the Senate.

4. Opinion of the court, with the opinion of the court in Asbury Dickins's case annexed; with a bill for the claimant's relief.

By order of the Court of Claims.

In testimony whereof, I have hereunto set my hand and affixed the [L. S.] seal of said court at Washington, this 7th day of May, A. D. 1856.

SAM'L H. HUNTINGTON,
Chief Clerk Court of Claims.

To the Honorable the Judges of the Court of Claims:

The petition of John Robb respectfully showeth: That your petitioner at the time hereafter mentioned, being chief clerk of the War Department, was appointed and duly commissioned to act as Secretary of War, at the following dates, to wit: June 8, 1832, July 16, 1832, November 12, 1832, May 6, 1833, June 6, 1833, and September 26, 1833, and served, as well as he recollects, altogether about nine months, under the appointments at the different periods above stated.

Your petitioner further states, that he presented his claim for payment at the Treasury Department, for the services rendered as

aforesaid, and that the First Auditor reported on the 10th August, 1849, the sum of two thousand seven hundred and eighty-one dollars and ninety-four cents, due from the United States to your petitioner for his salary as acting Secretary of War, for various periods, during the years 1832 and 1833, but there was no further action upon the case by the Treasury Department. The exact period of time which your petitioner served as aforesaid appeared from an official statement from the War Department, which, with other papers that accompanied the First Auditor's report, were lost or mislaid, and your petitioner asks that an order of court be made, to obtain from the War Department an official statement of the length of time he was acting Secretary of War.

Your petitioner having performed the duties of Secretary of War, believes that he is justly entitled to the salary for the time he acted as such, upon principles of equity and precedents of the Treasury Department in similar cases; and that he is the sole owner of the claim, and prays that a bill be reported to Congress for his relief.

JOHN ROBB.

J. S. EDWARD,
A. H. LAWRENCE, } *For petitioner.*

DISTRICT OF COLUMBIA,
Washington County, } *ss.*

Personally appeared before me, a justice of the peace in and for said county, John Robb, who made oath that the foregoing petition contains the facts, according to his knowledge and belief.

Given under my hand, this 16th July, 1855.

L. F. WHITNEY, JR.

JOHN ROBB *vs.* THE UNITED STATES.

Opinion of the court, delivered by Blackford, J.:

This is a claim upon the United States for compensation for the services of the claimant as acting Secretary of War, at different times, between the 8th of June, 1832, and the 9th of October, 1833—both days inclusive.

It appears by the evidence that the claimant was regularly appointed acting Secretary of War, at various times in said years, as stated in his petition; and that he served in that office, in those years, for one hundred and seventy-five days. The petition states, that during the times those duties were performed the claimant was chief clerk in the War Department.

This case is the same in principle with that of Dickins *vs.* The United States, recently decided by this court. The decision in that case, relative to the validity of the petition, is hereto attached. It shows the reasons of our decision in the present case.

We consider the claimant entitled for his services, as acting Secre-

tary of War, to the same compensation that was, at the times of his service, allowed by law to the Secretary of War—that is, at the rate of six thousand dollars a year. Such allowance is in accordance with the decision of the circuit court of the United States in the case of the United States *vs.* White and others, cited in our opinion in the case of Dickins *vs.* The United States.

The account rendered by the claimant is as follows:

"*The United States to John Robb, Dr., for services as acting Secretary of War.*

From	8th June, 1832,	to	15th June, 1832,	inclusive,	7 days.
	16th July, 1832,	to	6th Oct., 1832,	"	82 "
	12th Nov., 1832,	to	17th Nov., 1832,	"	5 "
	6th May, 1833,	to	8th May, 1833,	"	3 "
	6th June, 1833,	to	8th Aug., 1833,	"	64 "
	26th Sept., 1833,	to	9th Oct., 1833,	"	14 "
					175 days.

At the rate of $6,000 per annum, making $2,876 73."

We consider that account to be proved by the evidence; and we therefore render judgment in favor of the claimant for the said sum of two thousand eight hundred and seventy-six dollars and seventy-three cents. A bill for that sum is accordingly reported.

A BILL for the relief of John Robb.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Treasury pay to John Robb the sum of two thousand eight hundred and seventy-six dollars and seventy-three cents, out of any money in the treasury not otherwise appropriated, as a compensation in full for his services as acting Secretary of War, in the years eighteen hundred and thirty-two and eighteen hundred and thirty-three.

ASBURY DICKINS *vs.* THE UNITED STATES.

The opinion of the court, delivered by Judge Blackford:

This is a claim for compensation for services performed by the claimant as acting Secretary of the Treasury, at different periods, between the 24th of April, 1829, and the 31st of May, 1833—both days inclusive. It is also a claim for compensation for services performed as acting Secretary of State, at different periods, between the 10th of August, 1833, and the 9th of November, 1836—both days inclusive.

The petition, which is hereto attached, states that the claimant was appointed to said offices by the President of the United States, and rendered the services accordingly. It states, further, that during the times the claimant was acting as Secretary of the Treasury, he was also chief clerk in the Treasury Department; and, during the times

he was acting as Secretary of State, he was chief clerk in the State Department.

The petition also states, that the claimant's appointments of acting Secretary of the Treasury were made on account of the absence from the seat of government, or sickness, of the Secretary of the Treasury; and that his appointments of acting Secretary of State were on account of the absence or sickness of the Secretary of State.

The objection to the claim, relied on in this case, is founded on the 9th section of the act of Congress of 1818, entitled "An act to regulate and fix the compensation of the clerks in the different offices." That section is as follows:

"SEC. 9. *And be it further enacted*, That the compensation allowed by this act to clerks, shall commence from and after the 31st day of March last. And it shall be the duty of the Secretaries for the Departments of State, Treasury, War and Navy, of the Commissioners of the Navy, and the Postmaster General, to report to Congress, at the beginning of each year, the names of the clerks they have employed, respectively, in the preceding year, together with the time each clerk was actually employed during the year, and the sums paid to each; and no higher or other allowance shall be made to any clerk in the said departments and offices than is authorized by this act. And all acts, and parts of acts, inconsistent with the provisions of this act, are hereby repealed." 3 Stat. at Large, 447.

The meaning of that part of the above section, relied on by the solicitor, is only this: That no such clerk, as there referred to, shall receive any other compensation, as clerk, than what the act allows. It does not affect the question, whether the claimant is not entitled, besides his salary as clerk, to a compensation, and, if any, to what amount, for his discharge of the duties of the other offices conferred on him.

The 8th section of the act of Congress referred to by the claimant, is as follows:

"SEC. 8. *And be it further enacted*, That in case of the death, absence from the seat of government, or sickness, of the Secretary of State, Secretary of the Treasury, or of the Secretary of the War Department, or of any officer of either of the said departments, whose appointment is not in the head thereof, whereby they cannot perform the duties of their said respective offices, it shall be lawful for the President of the United States, in case he shall think it necessary, to authorize any person or persons, at his discretion, to perform the duties of the said respective offices, until a successor be appointed, or until such absence, or inability by sickness, shall cease." 1 Stat. at Large, 281.

It was under that law that the claimant received from the President the appointments, authorizing him to perform the duties, respectively, of Secretary of the Treasury and of Secretary of State.

It appears to us that the petition shows that the claimant, at the times he performed the duties of Secretary of the Treasury, held an office separate from his office of chief clerk; and that he also held an office separate from that of chief clerk at the times he performed the duties of Secretary of State. He held two offices at those times; and

there was no law to prohibit him from doing so. He discharged the duties of both offices, and must be entitled to compensation accordingly. He does not claim any pay beyond his salary as chief clerk, for extra services. His claim for compensation beyond his salary as chief clerk, is on account of his holding other offices at different times whilst he was chief clerk, and of his discharging the duties of such other offices.

The claim, we think, is well founded. There is the following decision on the subject, by the circuit court of the United States for the Maryland district. It was the case of a navy agent who had been appointed acting purser. Chief Justice Taney, in delivering the opinion of the court, uses the following language:

"But he is entitled to set off the sum of $5,328 08, for his salary as acting purser to the naval establishment at Annapolis. The Secretary of the Navy had a right to appoint a purser *ad interim*, usually called acting purser, to discharge the duties of purser at this establishment, if the demands of the public service elsewhere, or any other sufficient cause, put it out of his power to employ a purser regularly appointed. The court is bound to presume that the power, in this instance, was exercised under circumstances that justified the appointment of the defendant as acting purser. He performed all the duties of purser at the naval establishment, settled his accounts with the proper officer at Washington as such, and not as navy agent; and was recognised as acting purser in the reports to Congress concerning certain expenditures chargeable to that branch of the service. The act of Congress fixes the salary of purser, when not otherwise provided for, at $1,500 a year. As the defendant performed all the duties of the office, and performed them in the name and in the character of purser, he is entitled to the compensation which the law has provided for such services. The circumstance that he held the office of navy agent at the same time, can make no difference. There is no law which prohibits a person from holding two offices at the same time. As a matter of policy it would certainly be highly objectionable in most cases as a permanent arrangement; but in the absence of any legal provision to the contrary, this appointment was valid. Indeed, it often happens that in unexpected contingencies, and for temporary purposes, the appointment of a person already in office to execute the duties of another office, is more convenient and useful to the public than to bring in a new officer to execute the duty. And if the duties of the second office are performed, and the law has fixed the compensation which it deems just for such services, it cannot be material whether they are rendered by one holding another office or not, provided they are faithfully discharged." The United States *vs.* White and others, April term, 1851.

That case is very similar to the one before us, and is, no doubt, correctly decided. It shows that the present claimant is entitled to receive for his services, as acting Secretary of the Treasury and as acting Secretary of State, the same compensation, for the time he acted, which the law then allowed to the Secretaries of the Treasury and of State, respectively.

The petition further states that, from the 21st of June to the 7th

of August, 1831, the claimant received a compensation as Secretary of the Treasury; but that during that time, he did not receive his salary as chief clerk. The circumstance here stated will be taken into consideration, when an account shall be taken from the evidence, of the amount to which the claimant is entitled.

The solicitor refers us to certain acts of Congress of 1839 and 1842, (5 Stat. at Large, 349, 510, 525.) It is only necessary to observe, with respect to these acts, that they were not in force when the services now sued for were rendered.

Testimony is ordered to be taken in this case.

34th CONGRESS, 1st Session. } HO. OF REPRESENTATIVES. { REPORT C. C. No. 15.

WILLIAM H. CHASE.

[To accompany bill H. R. C. C. No. 6.]

MAY 16, 1856.—Referred to the Committee of Claims.
MAY 23, 1856.—Ordered to be printed.

The COURT OF CLAIMS made the following

REPORT.

WILLIAM H. CHASE *vs.* THE UNITED STATES.

To the honorable the Senate and House of Representatives of the United States in Congress assembled:

The Court of Claims respectfully presents the following documents as the report in the case of William H. Chase *vs.* The United States:

1. The petition of the claimant.
2. Claimant's petition to Congress, and documents therewith connected, referred by the Senate to the Court of Claims, and returned to the Senate.
3. Other documents referred by the Senate to the Court of Claims, and returned to the Senate.
4. Opinion of the court.
5. Bill for the relief of the claimant.

By order of the Court of Claims.

In testimony whereof, I have hereunto set my hand and affixed the [L. S.] seal of said court at Washington, this 7th day of May, A. D. 1856.

SAM'L H. HUNTINGTON,
Chief Clerk Court of Claims.

To the Honorable the Judges of the Court of Claims:

The petition of William H. Chase, a major of the Corps of Engineers in the army of the United States, respectfully states:

That for many years he had been charged by the War Department with the superintendence of the construction and repairs of the fortifications at Pensacola, and other public works on the Gulf of Mexico, and was the disbursing officer for the same; that in the settlement of his accounts by the accounting officers of the treasury, various items of charge for expenditures made by him, as disbursing officer aforesaid, during a period of many years, were disallowed, a detailed state-

ment of which is hereto appended, amounting in the aggregate to one thousand five hundred and seven dollars and fifty cents, (marked A,) and which he prays may be received as a part of this his petition. Said expenditures, he alleges, were made in good faith for the use and benefit of the public works under his charge as aforesaid.

Your petitioner further states that among the items so as aforesaid disallowed, is one amounting to $812 50, which had, in the settlements of his accounts at the treasury aforesaid, in September, 1839, and January, 1841, under the competent authority of the officers of the government of the United States then administering its affairs, been duly considered, passed upon, and admitted to his credit. Yet notwithstanding they were so decided upon and admitted to his credit as aforesaid, and so remained undisturbed until a new administration came into power, and new officers appointed, viz: in the month of August, 1842, these same items were again taken up, reviewed, and finally disallowed, and now stand as a debit against him. These acts of the accounting officers of the treasury, your petitioner is advised and believes, were inconsistent with the uniform principles and practice of the government; and he claims to be allowed the same, because he had rendered a full equivalent in the shape of responsible duties performed; and because the said items and charges being *res adjudicata*, it was not legally competent for the said accounting officers to reopen and reverse the same.

Your petitioner would further state that he petitioned Congress for relief in February, 1852, which was referred to the Committee of Claims of the House of Representatives; that the committee did not report thereon; and in December, 1853, his said petition was again referred to the same committee, and no report thereon.

Your petitioner would further show that he has not assigned or transferred said claims, or either of them, or any part thereof, but that he is the sole owner of the same.

Your petitioner prays your honors to inquire into the several matters aforesaid, and to grant him such relief in the premises as to law and justice may appertain.

WM. H. CHASE.

A.

1. Amount allowed in lieu of quarters and fuel, according to regulations from 27th April to 25th September, 1838, and from 10th April to 29th September, 1839, making in all 325 days, at $2 50 per day.....	$812 50
2. Payments to George E. Chase for services.....	365 00
3. Payment to Dr. Wedderburn for medical services.....	150 00
4. Payment to Wm. H. Shaw for services, &c.....	50 00
5. Payment made by Capt. George Dutton for hire of boat to convey Major Chase, &c.....	130 00
	1,507 50

WILLIAM H. CHASE *vs.* THE UNITED STATES.

Opinion of the court, delivered by Gilchrist, C. J.:

The claimant alleges that in the settlement of his accounts at the treasury in the months of September, 1839, and January, 1841, under the competent authority of the government of the United States, a charge of $812 50 was duly considered, passed upon, and admitted to his credit. In the month of August, 1842, this item of charge was again taken up, reviewed, and finally disallowed, and now stands as a debit against him. He alleges that this act of the accounting officers of the treasury was inconsistent with the uniform principles and practice of the government; that the allowance, after such investigation, became *res adjudicata*, and it was not competent for the officers of the treasury to reopen the case and reverse the decision formerly made.

It appears from the papers in the case from the War Department that this sum was allowed to the claimant upon the settlement of his accounts in September, 1839, and January, 1841; and that upon a subsequent settlement of his accounts on the 1st of August, 1842, the matter was re-examined, and the amount charged to him, upon the ground that, at the time when the credit was given him the Auditor did not know that for 325 days the claimant was absent in Europe upon leave from the War Department, the per diem allowance for which amounted to the sum of $812 50. This appears from the report of the Third Auditor, dated on the 6th of August, 1851. On the 16th of October, 1851, the Secretary of War decided that the sum should be allowed in the following terms: "The first item for *per diem* while absent from the works under his charge, but continuing to be responsible for, and to direct operations thereon, being in accordance with the practice at the time in some other cases, is allowed—$812 50."

On the 14th of November, 1851, the Second Comptroller made a communication to the Secretary of War containing certain statements connected with the claim. On the 22d of December, 1851, the Secretary of War made the following decision: "In view of the facts stated in the Comptroller's report of November 14, and which were not before the department when the decision of October 16th was made, the allowance made in that decision is hereby rescinded." It may be remarked that it is not contended that the means of information were not at hand in the War Department when the sum in question was credited to the claimant; nor that the same evidence did not exist upon the matter at that time, which existed in the year 1851; nor that there has been any attempt at concealment on the part of Major Chase.

It is proved, then, as the claimant alleges, that the sum of $812 50 was credited to him in the years 1839 and 1841, and that the account was re-examined, and the same sum was afterwards charged to him. The question of law therefore arises whether the head of an executive department has the legal authority, after a sum has been credited to a person in the employ of the government as an officer of the Uni-

ted States, to reopen the account and charge him with the amount of such credit.

This point has been settled by the Supreme Court of the United States. In the case of the United States *vs.* the Bank of the Metropolis, 13 Pet., 377, (14 Curtis, 114,) the marginal note is as follows: "The head of a department has not a right to review the decision of his predecessor allowing a credit, except to correct some error of calculation. If he is of opinion that the allowance was wrongful, he must have a suit brought." The action was brought by the United States to recover a sum of money of the defendants, who, at the trial, claimed certain credits consisting of acceptances by the Post Office Department. The verdict was for the defendants, and after the evidence was closed, the Attorney General moved the court to instruct the jury, that if, in the settlement, "there were credits claimed by them as allowed by order of Mr. Barry when Postmaster General, and entered on the journal, but not carried into these accounts in the ledger, and finally entered as credits in these accounts, which credits were for extra allowances which the said Postmaster General was not legally authorized to allow them, then it was in the power and was the duty of the present Postmaster General to disallow such items of credit."

Upon this point Mr. Justice Wayne pronounced the judgment of the court as follows:

"The third instruction asked the court to say, among other things, if the credits given by Mr. Barry were for extra allowances, which the said Postmaster General was not legally authorized to allow, then it was the duty of the present Postmaster General to disallow such items of credit. The successor of Mr. Barry had the same power and no more than his predecessor, and the power of the former did not extend to the recall of credits or allowances made by Mr. Barry, if he acted within the scope of official authority given by law to the head of the department. This right of an incumbent of reviewing a predecessor's decisions extends to mistakes in matters of fact arising from errors in calculation, and to cases of rejected claims, in which material testimony is afterwards discovered and produced. But if a credit has been given, or an allowance made, as these were, by the head of a department, and it is alleged to be an illegal allowance, the judicial tribunals of the country must be resorted to, to construe the law under which the allowance was made, and to settle the rights between the United States and the party to whom the credit was given. It is no longer a case between the correctness of one officer's judgment and that of his successor. A third party is interested, and he cannot be deprived of a payment on a credit so given but by the intervention of a court to pass upon his right. No statute is necessary to authorize the United States to sue in such a case. The right to sue is independent of statute, and it may be done by the direction of the incumbent of the department. The act of July 23, 1820, entitled 'An act to change the organization of the Post Office Department,' is only affirmative of the antecedent right of the government to sue, and directory to the Postmaster General to cause suits to be brought in the cases mentioned in the 17th section of that act. It also excludes him from

determining finally any case which he may suppose to arise under that section. His duty is to cause a suit to be brought."

To this deliberate judgment, by the highest tribunal in the Union, upon the precise point before us, we do not think that any remarks of our own would add any weight. We feel justified in holding that the credit to the claimant was improperly rescinded, and that he has a right to have the sum of $812 50 credited to him in his account with the United States.

The third item of charge by the claimant against the United States is for a payment of the sum of $150 to Dr. Wedderburn for medical services. The claimant alleges, upon this point, that "the engineer department was entitled to the services of a surgeon. None could be procured. Commodore Dallas permitted Dr. Wedderburn to attend. He was not ordered to it. It was no part of his duty. I employed him *ex officio*, and made a contract with him. It was approved by the engineer department." These statements are contained in Major Chase's letter of January 20, 1850. This charge was disallowed upon the ground that Dr. Wedderburn was an assistant surgeon in the navy, and was therefore prohibited, by the 3d section of the act to regulate the pay of the navy, approved March 3, 1835, and also by the 3d section of the act approved on the 3d of March, 1839, providing for the civil and diplomatic expenses of the government, from receiving the allowance.

By the regulation of the army, No. 1259, Army Regulations, page 331, it is provided that "when medical or surgical aid is required, if no surgeon or assistant surgeon of the army be at or near the place, the senior officer is authorized to obtain such aid by special agreement, in writing, according to this article." This article, therefore, authorizes the officer to procure such aid, and imposes no limitation upon him in the exercise of his authority.

The 2d section of the act of March 3, 1835, to regulate the pay of the navy, 4 Stat. at Large, 757, provides that "no allowance shall hereafter be made to any officer in the naval service of the United States for drawing bills, for receiving and disbursing money, or transacting any business for the government of the United States." * * * * "It is hereby expressly declared that the yearly allowance provided in this act is all the pay, compensation, and allowance that shall be received under any circumstances whatever by any such officer or person." It is by giving a strictly literal and rigid construction to this act, irrespective of the circumstances of the case, that the result is reached, that Major Chase should not be allowed the sum he has paid Dr. Wedderburn. But such a construction involves also the conclusion that a surgeon in the navy is prohibited from receiving any compensation for his services under any circumstances whatever. He might be at home, off duty, on leave of absence, or on furlough. He might, without the slightest interference with his official duties, turn his time and talents to account, and improve himself in his profession by rendering medical services. But the words of the statute are, that his pay as a surgeon is "all the compensation that shall be received under any circumstances." Literally applied this language deprives him of the stimulus of compensation for his labor, without

which few persons are either able or willing to work. The sensible answer to this construction undoubtedly is, that it sacrifices sense to sound; that it causes the words of the statute to predominate, without regard to the meaning of the law. Such a result is always to be avoided if possible; and because we think such a construction would not express the meaning of Congress, consistently with the received rules of interpretation, our opinion is that we must ascertain the mischief which the act was intended to remedy, and endeavor to perceive its meaning by the light which that consideration will throw upon it.

The object of this section was to consolidate the various allowances which officers of the navy had before that time received, into one annual sum. It is to be inferred that allowances had been made for drawing bills, for receiving and disbursing money, and for transacting business for the government generally. It was customary to present claims against the treasury for services of this description; and the object of the act was to provide that the government would no longer pay the claimant any extra allowance for such services. Here a sufficient and useful purpose is subserved by the act. But it cannot be supposed that the United States intended that no claim should be paid under any circumstances of which a naval officer was the existing but remote cause. A commanding officer might have employed, properly, a citizen surgeon to render professional aid for a specified sum. He again might have engaged a naval surgeon off duty to assist him, with an agreement that he should receive a proportionate part of the compensation, and he might have paid it, and the army officer might have paid *him*, according to his contract. Is the claim of the army officer to be rejected for so much of the compensation as it might be discovered eventually went into the pocket of the naval surgeon? It seems to us that Congress could not have intended to bring about such a result; and yet it logically follows from the literal and rigid construction contended for by the government.

It is further to be remarked, that if the construction contended for be given to the act, a surgeon in the navy is expressly prohibited from receiving any compensation for his services from any person who may make such payment a charge against the United States. If he is prohibited from this, he is punishable for doing it. The singular result would follow, that for rendering medical aid, out of the line of his duty, to an officer of the army, at whatever expense of time, trouble, and anxiety to himself, and receiving reasonable pay therefor, the naval surgeon would subject himself to censure. He would be punishable for rendering medical aid for the benefit of the government, if he were actuated by that motive to personal exertion so powerful with all men. We cannot think that such a result was intended by Congress.

Now, if Dr. Wedderburn had been ordered by his official superior, by an authority he was bound to obey, to perform this service, the case would be different. But such was not the fact. He was, *pro hac vice*, simply a citizen. He neglected no duty, and violated no principle, in performing the service; nor was Major Chase blameworthy for employing him.

The third section of the civil and diplomatic appropriation bill of

the 3d March, 1839, 5 Stat., p. 349, goes no further than the act of 1835. It provides that no person, whose salary is fixed by law, shall receive any extra allowance or compensation, in any form whatever, for the performance of any service, unless such allowance be authorized by law. It is similar to the provision in the act of 1835, and its language throws no further light upon the question. Our opinion is, that as the true construction of the act of 1835 does not prohibit Dr. Wedderburn from receiving compensation for his services not within the line of his duty, from third persons, there is no reason for holding that Major Chase did not lawfully pay him the sum claimed, and that he has a right to have this sum credited to him by the United States.

The fifth item of charge by the claimant is of the sum of $130, paid for the hire of a fishing smack to convey him to Havana, from Key West.

The facts as they appear from the papers are as follows:

Major Chase was on duty at Pensacola. He left that place, in pursuance of orders, on the 25th of December, 1844, and proceeded to Key West, to make examinations in relation to the commencement of fortifications on the Florida reef, where he arrived, via New Orleans and Havana, on the 12th of January, 1845, and remained there more than seven weeks in the performance of his duties with the board of engineers, and left that place on the 27th February, in a fishing smack, hired for him by Captain Dutton, of the engineer corps, that he might intercept the steam packet at Havana. He left Havana in the packet and arrived at Pensacola, via New Orleans, on the 7th of March, having been eight days on his route. Colonel Totten, chief of the engineer corps, states that had he not taken this course he would have been delayed about one month. He says, also, "considering that even with the help of a quick passage back, he was gone two months and a half, and that by waiting other opportunities his absence would have been extended to three months and a half, that important operations needed his presence, and that he was under heavy pecuniary responsibilities at those works, which could not be suspended by his absence even on duty, I think he was fully justified in taking the quickest mode of returning to his station. It cannot be a comparing the cost of the fishing smack ($130) hired thus to shorten the period of his absence, with the importance to the public interest of his personal direction of the operations committed to his charge on the shore of the gulf, for some three or four weeks. But the payment could not be made legally, in my opinion, out of appropriations for fortifications. It is a matter of transportation. This charge as against transportation might be suspended on account of its *rate*, but not on account of its *nature*. If the extraordinary circumstances of the case justified, as I think they did, a resort to the means stated, although comparatively expensive, there is no question in my mind that the amount should be paid, like any other account to engineer officers for travelling in the discharge of their duty, by the Quartermaster General's department."

It thus appears that although the chief of the engineer corps thought

of August, 1831, the claimant received a compensation as Secretary of the Treasury; but that during that time, he did not receive his salary as chief clerk. The circumstance here stated will be taken into consideration, when an account shall be taken from the evidence, of the amount to which the claimant is entitled.

The solicitor refers us to certain acts of Congress of 1839 and 1842, (5 Stat. at Large, 349, 510, 525.) It is only necessary to observe, with respect to these acts, that they were not in force when the services now sued for were rendered.

Testimony is ordered to be taken in this case.

34th CONGRESS, 1st Session. } HO. OF REPRESENTATIVES. { REPORT C. C. No. 15.

WILLIAM H. CHASE.

[To accompany bill H. R. C. C. No. 6.]

MAY 16, 1856.—Referred to the Committee of Claims.
MAY 23, 1856.—Ordered to be printed.

The COURT OF CLAIMS made the following

REPORT.

WILLIAM H. CHASE *vs.* THE UNITED STATES.

To the honorable the Senate and House of Representatives of the United States in Congress assembled:

The Court of Claims respectfully presents the following documents as the report in the case of William H. Chase *vs.* The United States:

1. The petition of the claimant.
2. Claimant's petition to Congress, and documents therewith connected, referred by the Senate to the Court of Claims, and returned to the Senate.
3. Other documents referred by the Senate to the Court of Claims, and returned to the Senate.
4. Opinion of the court.
5. Bill for the relief of the claimant.

By order of the Court of Claims.

In testimony whereof, I have hereunto set my hand and affixed the [L. S.] seal of said court at Washington, this 7th day of May, A. D. 1856.

SAM'L H. HUNTINGTON,
Chief Clerk Court of Claims.

To the Honorable the Judges of the Court of Claims:

The petition of William H. Chase, a major of the Corps of Engineers in the army of the United States, respectfully states:

That for many years he had been charged by the War Department with the superintendence of the construction and repairs of the fortifications at Pensacola, and other public works on the Gulf of Mexico, and was the disbursing officer for the same; that in the settlement of his accounts by the accounting officers of the treasury, various items of charge for expenditures made by him, as disbursing officer aforesaid, during a period of many years, were disallowed, a detailed state-

34th CONGRESS, 1st Session. } HO. OF REPRESENTATIVES. { REPORT C. C. No. 16.

ALMANZON HUSTON.

[To accompany bill H. R. C. C. No. 7.]

MAY 16, 1856.—Referred to the Committee of Claims.
JUNE 28, 1856.—Ordered to be printed.

The COURT OF CLAIMS made the following

REPORT.

ALMANZON HUSTON *vs.* THE UNITED STATES.

To the honorable the Senate and House of Representatives of the United States in Congress assembled:

The Court of Claims respectfully presents the following documents as the report in the case of Almanzon Huston *vs.* the United States:

1. The petition of the claimant to the Court of Claims.
2. Petition to Congress, referred by the Senate to the Court of Claims; returned to the Senate, with accompanying documents.
3. Letters and other papers received from the Postmaster General, transmitted to the Senate.
4. Petitions of citizens, referred to in the opinion of the court, transmitted to the Senate.
5. Depositions taken and used in the case before the Court of Claims, transmitted to the Senate.
6. Claimant's brief, transmitted to both houses of Congress.
7. Opinion of the court, and bill for claimant's relief, transmitted to both houses of Congress.

By order of the Court of Claims.

In testimony whereof, I have hereunto set my hand and affixed the [L. S.] seal of said court, at Washington, this seventh day of May, A. D. 1856.

SAM'L H. HUNTINGTON,
Chief Clerk Court of Claims.

IN THE U. S. COURT OF CLAIMS.

DISTRICT OF COLUMBIA, }
Washington county, ss. }

To the honorable the Judges of the Court of Claims:

The petition of Almanzon Huston, a resident citizen of the State of Texas, respectfully showeth unto your honors, that the government of the United States is justly indebted to him in the sum of $14,827.

In the month of October, 1848, your petitioner became sub-contractor under one R. W. Martin for carrying the United States mail from Sabinetown to San Augustine, in said State of Texas, a distance of twenty-eight miles, for the sum of $575 per annum, for two-horse coach service; and about the same time he became a sub-contractor under one George W. Grant to carry the mails from San Augustine to the city of Houston, upwards of two hundred miles, in two-horse coaches, and a horse mail from Huntsville to Washington, about seventy-five miles, for the annual compensation of five thousand one hundred dollars. Soon afterwards the service from Huntsville to Washington was increased to two-horse coach service, and an additional allowance was made petitioner by the Postmaster General of $750; an increase of speed was also ordered from seven to five days on the lines, for which an additional allowance of five hundred dollars was made.

Your petitioner would represent that the increase of mail-matter into Texas after the close of the war with Mexico was so great, that it became impossible to transport it in two-horse coaches. An application was made to the Post Office Department for an increase of service, which was declined in consequence of annexation having taken place too late for the regular mail lettings in 1846. Your petitioner would state that the route in question was the great thoroughfare in and through the State of Texas, and over it had to be transported all the mails for a very large portion of the State. From this main route, branch routes distributed the mails through eastern, northern, and a large portion of middle Texas. The importance of this route rendered it essential, for the regularity of the mails throughout the State, that it should not only be kept up, but that sufficient service should be placed upon it to enable the contractor to carry the whole mail through.

Under these circumstances, your petitioner placed on the entire route four-horse post coach service in the month of November, 1848, and continued it to the 30th day of June, 1850, when his contract expired. In his efforts to sustain this route in spite of bad roads and high prices of every thing, your petitioner spent three times the amount of his contract pay. His whole estate was expended in keeping up the public service, and in preserving the regularity of the United States mails. Had he not performed the service he did, the whole mail facilities of the interior of Texas would have been useless, as they were supplied through your petitioner's efforts, and over his route. (See papers on file.)

The whole amount allowed your petitioner, including the additional compensation, was $6,925. The contracts which were made in the spring of 1850, by the General Post Office Department, for precisely the same service, and which went into operation on the 1st day of July, 1850, amount in the aggregate, and at the lowest bids, to $16,290. Therefore, your petitioner prays an allowance for the labor and service performed by him for the general government, (the benefits accruing from which flowed into the national treasury,) equal in amount to the difference between the sum he received and that which was allowed under the contract of 1850, for the same ser-

vice—making the sum of $9,365 per annum, or $14,827 for the time he performed the service.

Your petitioner applied to the Congress of the United States for relief, and on the 12th of April, 1850, his application was referred by the Senate to the Committee on Post Offices and Post Roads; and on the 16th May following there was a bill reported, but no other action was then had. In 1854, February 27th, the subject was again referred to the appropriate committee, and on the 9th day of March a bill was reported, in words as follows:

"A BILL for the relief of Almanzon Huston.

"*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the Postmaster General be, and he is hereby, authorized to examine the claims of Almanzon Huston for additional compensation for carrying the mail from Sabinetown to the city of Houston, and from Huntsville to Washington, in the State of Texas, and make such allowance as the said Postmaster General may deem just and equitable; and that the amount, if any be so awarded, be paid out of any money in the treasury not otherwise appropriated."

This bill was passed on the 7th day of April following, and sent to the House of Representatives for its concurrence. On the 19th April, 1854, the bill was reported from the committee, and on motion laid on the table; and on the 17th January, 1855, it was again referred to the Committee on Post Offices and Post Roads, *which agreed to report the bill without amendment, and recommend its passage.* No report, however, was made, for the want of time; and Congress adjourned without any final action on the bill.

Your petitioner would also state that he is the original and only party in interest in the claim; and prays your honorable court to frame such a bill for the action of Congress as will appropriate to him the said sum of $14,827; and, as in duty bound, he will ever pray, &c.

A. H. EVANS,
Att'y for claimant.

THE STATE OF TEXAS,
San Augustine county.

I, Almanzon Huston, do solemnly swear that the facts as set forth in the foregoing petition are just and true, to the best of my knowledge and belief: so help me God.

ALMANZON HUSTON.

Sworn to and subscribed before me, the undersigned authority, on this 12th day of June, 1855.

R. F. SLAUGHTER, *J.P.*

U. S. COURT OF CLAIMS.

DISTRICT OF COLUMBIA, *County of Washington.* } In the matter of Almanzon Huston.

This is a clear case of *quantum meruit*, and depends solely upon the facts. Hughes *vs.* Denny, 5 M. and W. 183; Poncher *vs.* Norman, 5 D. and E. 649; 3 Barn. and C. 746; Grafton *vs.* Armstage, 15 Law J. 11.

The allegation is that the claimant performed certain labor for the government of the United States, rendered necessary by the action and policy of the government, fully recognised and received by the government, and the revenues from which flowed into the federal treasury. For this service he claims remuneration.

From the evidence, it will appear that claimant transported the United States mails from Sabinetown, via San Augustine, Nacogdoches, Crockett, and Huntsville, to the city of Houston, and from Huntsville to Washington, Texas, in *four-horse post coaches*, from November 1, 1848, to June 30, 1850; for which he received, per annum, only $6,925—the contract price for a much inferior grade of service. It will also appear from the evidence, that the four-horse post coach service was rendered absolutely necessary for the transportation of the mails, which fact is fully recognised by the government in letting out the contracts for the same grade of service from and after July 1, 1850. Under these contracts, given, too, to the *lowest* bidders, the government paid $——— per annum for precisely the same service rendered by claimant. The question for the court to determine is, what increase of pay should be allowed claimant for the work and labor done, and money expended for the government, over and above the requirements of his contract with the Post Office Department?

Surely no better estimate can be made or data procured than the price paid by the government for the same service after July 1, 1850. It was worth as much or more to the government prior to that date than it was afterwards, when the roads were improved and the mail-matter distributed over many new routes which were being established. The routes in question were let out under contract for the annual sum of $———, and the department was compelled afterwards to relet them at an increased rate of compensation, amounting to $——— per annum. This sum is what the department considered reasonable, and the court can have no better criterion in fixing the amount of compensation for the claimant.

As to the manner in which the service was performed by the claimant, the hardships he suffered, the difficulties surmounted, and the public interests served, reference is had to the evidence on file, embracing the testimony of postmasters, merchants, and citizens generally, along the whole route. Also, to the written statement of Senators Houston and Rusk, on file with the papers of the cause, and the written statement of A. H. Evans, who resided immediately upon the line of these routes, and was familiar personally with all the facts alleged.

The claimant annexes hereto a copy of his original petition, and submits it as a part of his brief.

ALEXANDER H. EVANS,
Attorney for Huston.

ALMANZON HUSTON *vs.* THE UNITED STATES.

Opinion of the court, delivered by Gilchrist, C. J.

This claim is founded upon an implied contract by the United States to pay the claimant for his services in transporting the mail from the month of November, 1848, to the 30th June, 1850.

It appears by the letter of the Postmaster General of the 15th of March, 1850, that the sum of $6,894 per year was paid for transporting the mail from Houston, by Washington, Huntsville, Nacogdoches, and San Augustine, to Sabinetown, semi-weekly, in two-horse coaches, under the contracts which expired on the 30th June, 1850.

Under the contracts which commenced on the 1st July, 1850, for the new service, covering the same ground, and by the same points, tri-weekly, in four-horse coaches, the sum of $19,590 per year was paid, that being the lowest sum bid by the contractors.

The claimant alleges that he performed the service over the routes specified, in four-horse coaches, from the 1st of November, 1848, to the 30th of June, 1850—a period of one year and eight months; that it was necessary for the public service that the mail should be thus transported; that this was done with the knowledge of the department; that it was the same service which was performed under the new contracts which commenced on the 1st of July, 1850; and that he reasonably deserves to have for such service the same compensation which the department has paid for it under the new contracts.

George L. Clapp deposes that he was special agent for the Post Office Department from February, 1848, to June, 1851; that the distance from Sabinetown to Houston is about 260 miles; that the roads over which the claimant carried the mail in the years 1848 and 1849 were, for the most of the time, almost impassable; that he was many times detained in consequence of the high state of the water in the winter and spring of those years; that a considerable part of the mail-matter transported by the claimant ought to have been sent to Galveston; that there was a yearly increase of the mail-matter; that he deemed four-horse coach service absolutely necessary to transport the mails; that he, as mail agent, advised the claimant to continue to carry the mail in four-horse coaches, as he considered the two-horse coach service almost useless, and told him the Postmaster General would doubtless pay him additional compensation.

James B. Johnson, of San Augustine; Ephraim Coon, of Nacogdoches; Emory S. Huston, of Nacogdoches; Thomas P. Collins, postmaster at Crockett; Martin K. Snell, postmaster at Houston; and William B. Reeves, city recorder of Houston, have also given depositions in the case. The result of their testimony is, that the claimant transported the mails over these routes in four-horse coaches; that the condition of the roads was so excessively bad, that it was abso-

lutely necessary that the mail should be thus transported. It also appears that much of the mail-matter carried by the claimant should have been sent over other routes; and that the weight of mail-matter would average 500 or 550 pounds per trip, on some of the routes. Some of the witnesses say that he carried the mail from the summer, and others say that he carried it from the fall of 1848, to the 30th of June, 1850. We think the evidence proves that he carried it from the 1st of November, 1848, to the 30th of June, 1850, as he has alleged, in four-horse coaches; and that it was absolutely necessary, owing to the condition of the roads and watercourses, that four-horse coaches should have been used for that purpose. There are in the case five reports from the postmaster at Nacogdoches, in the year 1850, of the failures of the mails; from which it appears that the mail failed to arrive "by the usual mode of conveyance, viz: four-horse post coaches." This shows that the knowledge of the fact that the mail was transported in four-horse coaches was brought home to the Post Office Department. No objection was made to it, nor was the claimant ever informed that he was transporting the mail in this way at his own risk, nor that the department would not make him any compensation therefor. That the department was aware of this fact, appears also from a petition signed by three hundred citizens of Harris county, and of the city of Houston, addressed to the House of Representatives or to the Postmaster General, stating that the mail was thus transported, the necessity therefor, and praying that compensation may be made to the claimant. This petition bears date the 4th day of January, 1850, and comes from the department. On the 29th of December, 1849, a public meeting was held at San Augustine, the proceedings of which were published in the papers, and resolutions stating the facts were adopted. There is also another petition signed by the citizens of San Augustine, for the same purpose, which likewise comes to us from the department. The Postmaster General was also informed of the facts, being substantially those proved by the depositions in the case, by a letter from the postmaster at San Augustine, dated on the 26th of February, 1850. There are also numerous certificates and communications from postmasters and others to the department, stating that the mail was transported in four-horse coaches, and that two-horse coaches were entirely insufficient for that purpose.

As the transportation of the mail, then, was necessary to be performed by four-horse coaches, and was actually so performed; as the department knew that such coaches were necessary, and were used, and made no objection thereto, the claimant being reported for the purpose of being fined for occasional failures of the mail; the question arises, whether there is any implied contract on the part of the United States to pay the claimant an additional compensation for the services rendered?

That the United States may be liable upon an implied contract appears from the first section of the act constituting this court, by which jurisdiction is given the court to hear and determine all claims founded "upon any contract, express or implied, with the government of the United States." What the law looks to, in the case of an

implied contract, is not the agreement of the parties, but their circumstances or acts; and from these circumstances or acts the law raises the duty, and implies the promise, by which the party will be bound. In the case of an express contract, the law measures the extent of each party's duty by the terms to which he has expressly agreed. In the case of an implied contract, the terms are such as reason and justice dictate in the particular case, and which, therefore, the law presumes that every man undertakes to perform.—(Chitty on Contracts, 18; Hosmer, C. J., 4 Conn. Rep., 524.) In the case of Abbott, *vs.* Harmon, 7 Greenl., 118, it was held that where one accepts, or knowingly avails himself of the benefit of services done for him without his authority or request, he shall be held to pay a reasonable compensation for them. In this case Mr. Justice Shepley said: 'When one person performs services for the benefit, and with the *knowledge* and *tacit consent* of another, the law implies a promise to pay a reasonable compensation for them." That was a case where a school-house was built under a contract with persons assuming to act as a district committee, but who had no authority; yet a district school was afterwards kept in it by the direction of the school agent. This was held to be an acceptance of the house on the part of the district, binding the inhabitants to pay the reasonable value of the building. Upon the same ground is the decision in the case of Lamb *vs.* Bunce, 4 M. & S., 275. A surgeon attended a parish pauper, with the knowledge of the overseer of the parish; and it was held that the fact of the overseer *knowing of* and *not repudiating* the surgeon's attendance, was equivalent to a request. It is stated in 1 Parsons on Contracts, 540, 542, as one of the principles to be deduced from the authorities generally, and from the reason of the case, that where the changes in a contract necessarily imply an increased price, and the employer expressly authorizes, or silently, but with full knowledge, assents to them, he is then bound to pay for them.

That the services alleged were rendered by the claimant; that they were necessary to be performed; that the department knew that they were rendered, and made no objection to them; are facts which we find to be proved by the evidence. And we are also of opinion that the claimant is entitled to compensation from the United States.

The question then arises as to the mode of ascertaining the value of his services.

The 23d section of the act of July 2, 1836, (5 St. at Large, 85,) points out the duties of the Postmaster General in relation to advertising for contracts, and prescribes limits to his power of making additional compensation for services. Among other things, it provides that "when any extra service shall be ordered, the amount of the allowance therefor in dollars and cents shall be signified in the order for such service, and be forthwith entered upon the books of the Post Office Department; and no additional compensation shall be paid for any extra regular service rendered before the issuing of such order, and the making of such entry; and every order, entry, or memorandum whatever, on which any action of the department is to be had, allowance made, or money paid, and every contract, paper, or obliga-

tion drawn up in said office by any officer thereof, shall have affixed to it its true date."

The object of this provision was to impose a check upon the exercise of the discretionary power of the Postmaster General, by requiring that everything relative to his action upon the subject of extra allowances should be recorded where it might be inspected, so that when the public money should be expended, nothing relating to its expenditure should be left unexplained or uncertain. The section does not provide, either in its letter or its spirit, that no claim should be valid against the United States, unless an order for additional service had been made by the Postmaster General. It was very proper to limit and check the discretion of that officer, and that was a sufficient reason for the provision. It was unnecessary to do anything more, for Congress reserved the subject of implied contracts, and had not then conferred the power of investigating them upon any tribunal. It cannot be supposed that the framers of the act looked forward to a period twenty years distant, when this court should be constituted, and intended to provide that, although the court should have jurisdiction of implied contracts, a claim of this kind should not be valid without a special order from the Postmaster General.

It is to be noticed, also, that this section, after the various restrictions alluded to have been stated, contains a proviso that "the Postmaster General may make temporary contracts until a regular letting can take place." The contract in which the claimant had an interest expired on the 30th of June, 1850, and the contracts for the new service went into operation on the 1st July, 1850. If the Postmaster General might make temporary express contracts, the United States may then be bound by the obligation of an implied contract, proved in such a way as is recognised by the rules of law to be binding upon individuals.

But there is another provision in this section, which states the rule of compensation in explicit terms, and which does not appear to be subject to any modifications. It is provided that "no additional compensation shall be made to any mail contractor, so as that the compensation for additional regular service shall exceed the exact proportion which the original compensation bears to the original services stipulated to be performed." The principle of this rule is adopted as the correct one in 1 Parsons on Contracts, 542. In remarking on changes in a contract, which necessarily imply an increased price, and which are assented to by the employer, the author says: "The question may then arise, whether he is to pay for them according to the usual rate of charging for such work, with no reference to the contract; or whether he must pay only according to the rate of the contract. Some cases hold the former, but we think the better practice and the better reason in favor of the latter."

It appears from a certificate by George W. Grant, the claimant's predecessor in the contract, and under whom the claimant performed the service, which comes to us from the Post Office Department through the House of Representatives, that from the 1st of July, 1847, to the 1st of February, 1848, the roads at that time being uncommonly good, he transported the mail from San Augustine to

Houston in two-horse coaches, with sixteen horses. As the claimant put upon the line four-horse coaches, he would require thirty-two horses, or double the number used by Grant; a fair compensation for which would be, according to the statute rule, double the sum paid under the original contract. He transported the mail one year and eight months, for which he was paid at the rate of $6,894 per year, or $11,490 for the whole period. And the same sum, in addition to what he has received, he is now entitled to recover of the United States. And we report a bill accordingly.

AN ACT for the relief of Almanzon Huston.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Treasury be, and he hereby is, directed to pay to Almanzon Huston, out of any money in the treasury not otherwise appropriated, the sum of eleven thousand four hundred and ninety dollars, being in full for his services in transporting the mail from Houston to Sabinetown, in Texas, from the first of November, 1848, to the thirtieth of June, 1850.

34th CONGRESS, 1st Session. } HO. OF REPRESENTATIVES. { REPORT C. C. No. 17.

MICHAEL NOURSE.

[To accompany bill H. R. C. C. No. 8.]

MAY 16, 1856.--Referred to the Committee of Claims.
MAY 23, 1856.—Ordered to be printed.

The COURT OF CLAIMS made the following

REPORT.

MICHAEL NOURSE *vs.* THE UNITED STATES.

To the honorable the Senate and House of Representatives of the United States in Congress assembled:

The Court of Claims respectively presents the following documents as the report in the case of Michael Nourse *vs.* The United States:

1. The petition of the claimant to the Court of Claims.
2. Claimant's petition to Congress, with accompanying documents, referred to the Court of Claims by the House of Representatives, and returned to that House.
3. Statement showing the number of days the claimant acted as Register of the Treasury, transmitted to the House of Representatives.
4. Opinion of the court in this case.
5. Opinion of the court in the case of Asbury Dickins *vs.* The United States.

By order of the Court of Claims.

In testimony whereof, I have hereunto set my hand and affixed the [L. S.] seal of said court at Washington, this 7th day of May, A. D. 1856.

SAM'L H. HUNTINGTON,
Chief Clerk Court of Claims.

To the Honorable the Judges of the Court of Claims:

The petition of Michael Nourse respectfully showeth: That prior to the 3d March, 1849, your petitioner being then chief clerk in the office of the Register of the Treasury, at several different periods was appointed acting Register of the Treasury by the Presidents of the United States.

These appointments were made under the authority of the eighth section of the act of 8th May, 1792, entitled "An act making alterations in the Treasury and War Departments."—Stat. at Large, vol. 1, page 281.

Your petitioner exhibits herewith the certificate of Mr. Hunter, Assistant Secretary of State, to show the date of his several commissions, and by whom the appointments were made; and the certificate of Finley Bigger, Register of the Treasury, to show the performance of the service under the several commissions.

The aggregate service prior to the 3d March, 1849, was three hundred and forty-four days. This, at the rate of $3,000 per annum, (the salary of the Register,) amounts to $2,827 32. During the same time, your petitioner received his salary as chief clerk, amounting to $1,622 19.

Your petitioner presented his claim to the Senate, first session of the thirty-third Congress, a favorable report (No. 197) was made, and a bill for his relief passed the Senate, and in the House of Representatives was referred to the Committee of Claims. That committee reported unfavorably. The report was not acted upon in the House.

Your petitioner is advised there is justly due him from the United States compensation for these services; and he prays the judgment of this court, therefore.

Your petitioner is the sole owner of his claim, not having assigned it to any one else.

MICHAEL NOURSE.

DISTRICT OF COLUMBIA, }
Washington County, }

Personally appeared before me, a justice of the peace in and for the county aforesaid, Michael Nourse, who made oath, according to law, that the facts stated in the annexed petition are true to the best of his knowledge and belief.

PAUL STEVENS,
Justice of the Peace.

JULY 17, 1855.

To the honorable the Senate and House of Representatives of the United States:

The memorial of Michael Nourse respectfully showeth: That during the last twenty-four years, while acting as chief clerk in the office of the Register of the Treasury, he was occasionally appointed by the President to take charge of the office and perform the duties of Register, which he accordingly did; that at two periods he held the appointment of Register *ad interim*, and the salary of Register was paid to him; at all other times he received only the salary of $1,700 as chief clerk.—(See Paper A.)

And your memorialist further shows, that during the same period he acted, also, by appointment from the Secretary of the Treasury, at

his own risk and responsibility, as disbursing agent to the amount exhibited in Paper B.

For these several services he asks a reasonable compensation, which he is encouraged to hope will be readily granted, in consideration of the fact that officers of the government have, probably without exception, when filling two offices, received the larger salary; and also because clerks now at a salary of $1,800 are allowed $200 per annum as disbursing agents whenever so employed in the executive departments of the government, as authorized by the act of Congress of March 3, 1853.

All which is respectfully submitted.

MICHAEL NOURSE.

WASHINGTON, *December* 29, 1853.

A.

Statement showing the time of service of Michael Nourse as acting Register of the Treasury.

Extracts from the records of temporary commissions granted by the President of the United States, kept at the State Department.			Period of service, and number of days employed, as shown by the records of the Register of the Treasury.	
By whom granted.	Date.	Page of record.	Period of service.	No. of days.
President Jackson	Feb. 16, 1830	78	From Feb. 16 to Feb. 25	10
Do	April 17, 1830	88	April 17 to May 1	14
Do	July 18, 1832	112	July 18 to Aug. 16	30
Do	Dec. 13, 1832	113	Dec. 31 to Jan. 11	12
Do	May 2, 1833	118	May 2 to May 5	4
Do	June 30, 1833	122	June 30 to June 31	2
Do	Oct. 12, 1833	130	Oct. 12 to Oct. 15	4
Do	July 17, 1834	134	July 7 to Sept. 30	86
Do	Sept. 23, 1835	151	Sept. 23 to Sept. 29	7
Do	April 20, 1836	154	April 20 to May 14	25
Do	June 3, 1836	156	June 3 to Aug. 10	69
President Van Buren	April 21, 1837	168	April 21 to May 20	30
Do	June 3, 1837	174	June 3 to June 13	11
Do	Aug. 29, 1837	177	Aug. 29 to Sept. 2	5
Do	July 17, 1839	193	July 17 to Aug. 9	23
Do	May 7, 1840	206	May 7 to May 12	6
Do	Sept. 21, 1840	210	Sept. 21 to Oct. 17	27
Do	Oct. 26, 1840	210	Oct. 26 to Oct. 30	5
President Tyler	May 17, 1841	214	May 17 to May 18	2
Do	June 30, 1841	214	June 30 to July 2	2
Do	Aug. 11, 1841	214	Aug. 11 to Aug. 13	3
Do	Sept. 16, 1842	218	Sept. 16 to Sept. 30	14
Do	Oct. 9, 1842	220	Oct. 9 to Oct. 16	8
Do	Oct. 26, 1842	224	Oct. 26 to Nov. 2	7
President Polk	Sept. 18, 1845	227	Sept. 18 to Sept. 26	9
Do	April 29, 1846	228	April 29 to May 1	3
Do	Aug. 12, 1846	229	Aug. 12 to Sept. 4	23
Do	May 7, 1847	231	May 7 to May 12	6

STATEMENT—Continued.

Extracts from the records of temporary commissions granted by the President of the United States, kept at the State Department.			Period of service, and number of days employed, as shown by the records of the Register of the Treasury.	
By whom granted.	Date.	Page of record.	Period of service.	No. of days.
President Taylor	March 6, 1849	235	From Mar. 6 to April 9	35[a]
Do	July 18, 1849	236	July 18 to July 21	4
Do	Jan. 17, 1859	237	Jan. 17 to Feb. 12	27[a]
Do	Mar. 25, 1850	237	Mar. 25 to April 10	17
President Fillmore	Oct. 4, 1850	240	Oct. 4 to Oct. 17	13
Do	Dec. 6, 1850	241	Dec. 6 to Dec. 13	7
Do	Feb. 27, 1851	242	Feb. 27 to Mar. 20	22
Do	April 14, 1851	243	April 14 to April 26	13
Do	July 9, 1851	245	July 9 to July 11	3
Do	July 23, 1851	246	July 23 to Aug. 29	38
Do	Oct. 8, 1851	249	Oct. 8 to Oct. 16	9
Do	Oct. 30, 1851	249	Oct. 30 to Nov. 1	3
Do	March 3, 1852	252	Mar. 3 to Mar. 9	7
Do	July 28, 1852	256	July 28 to Aug. 24	28
Do	Oct. 11, 1852	259	Oct. 11 to Oct. 17	7
Do	Nov. 2, 1852	259	Nov. 2 to Nov. 6	6
				686
From which deduct 62 days as Register *ad interim*, for which Michael Nourse received pay as Register				62
Number of days during which he acted as Register, and received the salary of chief clerk				624

Difference between the salary as Register and that of chief clerk, for 624 days, is $2,222 58, to wit:

Register's salary	$5,128 76
Chief clerk's salary	2,906 18
	2,222 58

IN THE SENATE OF THE UNITED STATES.—*April* 5, 1854.

Mr. Wade made the following report:

The Committee of Claims, to whom was referred the petition of Michael Nourse, report:

It is represented that during the period from 1830 to 1853 the memorialist held the office of chief clerk in the office of the Register of the Treasury, at a salary of $1,700 per annum; that at sundry times he was commissioned by the President to act temporarily as Register of the Treasury, which duty he performed for periods varying from two or three days to several weeks at a time, amounting in all to 624 days, and for which time he claims the difference between his salary

[a] Received salary as Register.

as chief clerk, which he received, and the salary attached to the office of Register, viz: $3,000 per annum, amounting to $2,222. By the act of 1792 (U. S. Statutes at Large, vol. I, p. 281) it is provided that, in case of the sickness or absence of the heads of departments or bureaus, "it shall be lawful for the President of the United States, in case he shall think it necessary, to authorize any person or persons, at his discretion, to perform the duties of said respective offices" until the absence, &c., shall cease. It will be observed that, although this act authorizes the temporary appointment and employment, it is silent in reference to the amount or manner of compensation. It is not to be presumed to have been the intention of Congress to authorize the President to require the service without intending that proper compensation should be made; and although in this case the duty was devolved upon a subordinate officer, who was already in the service and pay of the government, he does not appear to have received any compensation for the additional labor and responsibility which were devolved upon him by these appointments of the President.

The committee report the accompanying bill, allowing the petitioner to be paid for the services performed at the same rate allowed to the Register for the like services.

IN THE SENATE OF THE UNITED STATES.—*April* 5, 1854.

Mr. Wade, from the Committee of Claims, submitted a report, (No. 197,) accompanied by the following bill; which was read and passed to a second reading.

A BILL for the relief of Michael Nourse.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the proper accounting officers of the Treasury Department be, and they are hereby, authorized and required to account with, and allow to, Michael Nourse, late chief clerk in the office of the Register of the Treasury, for the time that he performed the duties of Register of the Treasury under temporary appointments by the President of the United States, the same compensation that was at the time allowed by law to the Register for those duties, to be paid out of any money in the treasury not otherwise appropriated, deducting therefrom the compensation received by said Nourse during said time as chief clerk.

IN THE HOUSE OF REPRESENTATIVES.

APRIL 12, 1854.—Referred to the Committee of Claims.

JULY 15, 1854.—Reported from the committee with a recommendation that it do not pass. Committed to a Committee of the Whole House to-morrow.

AN ACT for the relief of Michael Nourse.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the proper accounting

officers of the Treasury Department be, and they are hereby, authorized and required to account with, and allow to, Michael Nourse, late chief clerk in the office of the Register of the Treasury, for the time that he performed the duties of Register of the Treasury under temporary appointments by the President of the United States, the same compensation that was at the time allowed by law to the Register for those duties, to be paid out of any money in the treasury not otherwise appropriated, deducting therefrom the compensation received by said Nourse during said time as chief clerk.

Passed the Senate April 7, 1854.

Attest: ASBURY DICKINS,
Secretary.

B.—*Statement of moneys received and accounted for by Michael Nourse, late disbursing agent in the office of the Register of the Treasury, from June 1, 1829, to April 28, 1853.*

In what year received.	Salaries in office of the Register.	Contingent expenses of the office of the Register.	Stating and printing the public accounts.	Expenses incident to issuing treasury notes.	Expenses for registers for ships and vessels, and lists of crews.	In relation to furnishing 156 rooms in new Treas'y building.	Expenses incident to loans and re-issue of treasury notes.	Expenses incident to loans and treasury notes.	Interest and reimbursement of domestic debt, (old.)	Unclaimed dividends of debts contracted since July 20, 1841.	Total each year.
1829	$10.896 72										$10.896 72
1830	26,409 00										26,409 00
1831	26,400 00	$3,000 00	$1,400 00								30,800 00
1832	26,400 00	3,000 00	1,400 00								30,800 00
1833	29,133 10	3,000 00	1,300 00								33,433 10
1834	26,860 86	3,000 00	1,500 00								31,360 86
1835	27,364 06	3,000 00	1,400 00								31,764 06
1836	26,845 97	3,000 00	1,400 00								31,245 97
1837	30,800 97	3,000 00	1,400 00	$300 00							35,500 97
1838	29,174 87	3,000 00	1,400 00	900 00	$3,617 13						38,092 00
1839	27,199 69	3,000 00	1,400 00			$200 00					31,799 69
1840	27,200 00	3,000 00	1,400 00	500 00		800 00					32,900 00
1841	27,200 00	3,000 00	1,800 00	1,700 00							33,700 00
1842	28,180 68	3,850 00		950 00							32,980 68
Jan. 1 to June 30,1843	14,900 00	2,642 41		145 56			$100 00				17,787 97
1843-'44	27,326 22	3,000 00		2,000 00	2,000 00		300 00				34,626 22
1844-'45	32,471 00	4,500 00		1,000 00			500 00				38,471 00
1845-'46	31,500 00	3,000 00					400 00				34,900 00
1846-'47	29,938 45	7,300 00						$2,181 88			39,420 33
1847-'48	32,000 00	5,000 00						3,403 44	$500 00	$2,500 00	43,403 44
1848-'49	32,858 89	3,975 00						2,693 95	4,500 00	18,080 00	62,107 84
1849-'50	33,348 99	7,546 25						2,051 94	2,000 00		44,947 11
1850-'51	33,850 00	4,000 00						1,500 00	2,000 00	5,308 02	46,658 02
1851-'52	33,545 65	4,500 00						2,000 00	1,000 00		41,045 65
1852-'53	33,385 39	3,506 65			2,815 91			1,629 38	158 32		41,495 65
	705,190 44	85,820 31	15,800 00	7,495 64	8,433 04	1,000 00	1,300 00	15,460 59	10,158 32	25,888 02	876,546 28

TREASURY DEPARTMENT, *Register's Office, December* 17, 1853.

I hereby certify that the accounts of Michael Nourse, late disbursing agent for the above objects, have been closed, and that the balances due by him at the time of his going out of office were promptly repaid by him.

F. BIGGER, *Register.*

MICHAEL NOURSE.

Statement showing days upon which warrants issued by the Secretary of the Treasury were signed by Michael Nourse, esq., as acting Register, from February 16, 1830, to May 12, 1847, as appears from the warrants on file in the Register's office.

Period of time.	No. of days.
February 16 to February 25, 1830, inclusive	10
April 17 to May 1, 1830, do.	15
July 18 to August 15, 1832, do.	29
December 31, 1832, to January 11, 1833, do.	12
May 2, 1833, to May 4, 1833, do.	3
June 30, 1833	1
October 12 to October 15, 1833, inclusive	4
July 7 to September 30, 1834, do.	54
September 23 to September 29, 1835, do.	7
April 20 to May 14, 1836, do.	25
July 21 to August 13, 1836, do.	23
April 21 to May 20, 1837, do.	30
June 5 to June 13, 1837, do.	9
September 1 to September 2, 1837, do.	2
August 7 to August 10, 1839, do.	4
May 7 to May 12, 1840, do.	6
October 5 to October 19, 1840, do.	15
October 26 to November 3, 1840, do.	9
May 17 to May 18, 1841, do.	2
June 30 to July 2, 1841, do.	3
August 11 to August 13, 1841, do.	3
September 19 to September 30, 1842, do.	12
May 3 to May 27, 1845, do.	25
September 19 to September 26, 1845, do.	8
April 29 to May 1, 1846, do.	3
August 12 to September 4, 1846, do.	24
May 7 to May 12, 1847, do.	6
	344

TREASURY DEPARTMENT, *Register's Office, April* 3, 1355.

F. BIGGER, *Register.*

MICHAEL NOURSE *vs.* THE UNITED STATES.

Opinion of the court, delivered by Blackford, J.

The claimant claims compensation for his services as acting Register of the Treasury, at different times, between the 16th of February, 1830. and May 12, 1847—both days inclusive.

The evidence shows that the claimant was regularly appointed acting Register of the Treasury at various times between the dates aforesaid, and that he served in that office at various times between those dates, for three hundred and forty-four days. The claimant, during the times he served as acting Register of the Treasury, was chief clerk in the office of the Register of the Treasury.

This case is the same in principle with that of Dickins *vs.* The United States, recently decided by this court. The decision in that case, relative to the validity of the petition, is hereto attached. It shows the reasons for our decision in the present case.

The solicitor, in opposition to a part of this claim, relies on the act of 1839, 5 Stat. at Large, page 349, section 3, and the acts of 23d and 26th of August, 1842, 5 Stat. at Large, page 510, section 2, and page 525, section 12. But we do not think that these acts apply to this case. They do not contemplate a case where the same person holds two distinct offices at the same time, which is the present case.

We consider the claimant entitled, for his services as acting Register of the Treasury, to the same compensation that was, at the times of his service, allowed by law to the Register of the Treasury—that is, at the rate of three thousand dollars a year. Such allowance is in accordance with the decision of the circuit court of the United States in the case of the United States *vs.* White and others, cited in our opinion in the case of Dickins *vs.* The United States.

Annexed to this opinion are documents marked A and B; one of which is the statement of W. Hunter, assistant Secretary of State, and the other that of F. Bigger, Register of the Treasury. These documents prove the service of the claimant to have been rendered as aforesaid, for three hundred and forty-four days. The compensation due to him for that service, at the rate of three thousand dollars a year, is two thousand eight hundred and twenty-seven dollars and thirty-nine cents. Judgment is therefore hereby rendered for the claimant against the United States for the last named sum, and a bill for that amount is accordingly reported.

A BILL for the relief of Michael Nourse.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Treasury pay to Michael Nourse the sum of two thousand eight hundred and twenty-seven dollars and thirty-nine cents, out of any money in the treasury not otherwise appropriated, as a compensation in full for his services as acting Register of the Treasury at various times between the sixteenth of February, eighteen hundred and thirty, and the twelfth of May, eighteen hundred and forty-seven—both days inclusive.

ASBURY DICKINS *vs.* THE UNITED STATES.

The opinion of the court, delivered by Judge Blackford:

This is a claim for compensation for services performed by the claimant as acting Secretary of the Treasury, at different periods, between the 24th of April, 1829, and the 31st of May, 1833—both days inclusive. It is also a claim for compensation for services performed as acting Secretary of State, at different periods, between the 10th of August, 1833, and the 9th of November, 1836—both days inclusive.

The petition, which is hereto attached, states that the claimant was appointed to said offices by the President of the United States, and rendered the services accordingly. It states, further, that during the times the claimant was acting as Secretary of the Treasury, he was also chief clerk in the Treasury Department; and, during the times he was acting as Secretary of State, he was chief clerk in the State Department.

The petition also states, that the claimant's appointments of acting Secretary of the Treasury were made on account of the absence from the seat of government, or sickness, of the Secretary of the Treasury; and that his appointments of acting Secretary of State were on account of the absence or sickness of the Secretary of State.

The objection to the claim, relied on in this case, is founded on the 9th section of the act of Congress of 1818, entitled "An act to regulate and fix the compensation of the clerks in the different offices." That section is as follows:

"SEC. 9. *And be it further enacted*, That the compensation allowed by this act to clerks, shall commence from and after the 31st day of March last. And it shall be the duty of the Secretaries for the Departments of State, Treasury, War and Navy, of the Commissioners of the Navy, and the Postmaster General, to report to Congress, at the beginning of each year, the names of the clerks they have employed, respectively, in the preceding year, together with the time each clerk was actually employed during the year, and the sums paid to each; and no higher or other allowance shall be made to any clerk in the said departments and offices than is authorized by this act. And all acts, and parts of acts, inconsistent with the provisions of this act, are hereby repealed." 3 Stat. at Large, 447.

The meaning of that part of the above section, relied on by the solicitor, is only this: That no such clerk, as there referred to, shall receive any other compensation, as clerk, than what the act allows. It does not affect the question, whether the claimant is not entitled, besides his salary as clerk, to a compensation, and, if any, to what amount, for his discharge of the duties of the other offices conferred on him.

The 8th section of the act of Congress referred to by the claimant, is as follows:

"SEC. 8. *And be it further enacted*, That in case of the death, absence from the seat of government, or sickness, of the Secretary of State, Secretary of the Treasury, or of the Secretary of the War Department, or of any officer of either of the said departments, whose appointment is not in the head thereof, whereby they cannot perform the duties of their said respective offices, it shall be lawful for the President of the United States, in case he shall think it necessary, to authorize any person or persons, at his discretion, to perform the duties of the said respective offices, until a successor be appointed, or until such absence, or inability by sickness, shall cease." 1 Stat. at Large, 281.

It was under that law that the claimant received from the President the appointments, authorizing him to perform the duties, respectively, of Secretary of the Treasury and of Secretary of State.

It appears to us that the petition shows that the claimant, at the times he performed the duties of Secretary of the Treasury, held an office separate from his office of chief clerk; and that he also held an office separate from that of chief clerk, at the times he performed the duties of Secretary of State. He held two offices at those times; and there was no law to prohibit him from doing so. He discharged the duties of both offices, and must be entitled to compensation accordingly. He does not claim any pay beyond his salary as chief clerk, for extra services. His claim for compensation beyond his salary as chief clerk, is on account of his holding other offices at different times whilst he was chief clerk, and of his discharging the duties of such other offices.

The claim, we think, is well founded. There is the following decision on the subject, by the circuit court of the United States for the Maryland district. It was the case of a navy agent who had been appointed acting purser. Chief Justice Taney, in delivering the opinion of the court, uses the following language:

"But he is entitled to set off the sum of $5,328 08, for his salary as acting purser to the naval establishment at Annapolis. The Secretary of the Navy had a right to appoint a purser *ad interim*, usually called acting purser, to discharge the duties of purser at this establishment, if the demands of the public service elsewhere, or any other sufficient cause, put it out of his power to employ a purser regularly appointed. The court is bound to presume that the power, in this instance, was exercised under circumstances that justified the appointment of the defendant as acting purser. He performed all the duties of purser at the naval establishment, settled his accounts with the proper officer at Washington as such, and not as navy agent; and was recognised as acting purser in the reports to Congress concerning certain expenditures chargeable to that branch of the service. The act of Congress fixes the salary of purser, when not otherwise provided for, at $1,500 a year. As the defendant performed all the duties of the office, and performed them in the name and in the character of purser, he is entitled to the compensation which the law has provided for such services. The circumstance that he held the office of navy agent at the same time, can make no difference. There is no law which prohibits a person from holding two offices at the same time. As a matter of policy it would certainly be highly objectionable in most cases as a permanent arrangement; but in the absence of any legal provision to the contrary, this appointment was valid. Indeed, it often happens that in unexpected contingencies, and for temporary purposes, the appointment of a person already in office to execute the duties of another office, is more convenient and useful to the public than to bring in a new officer to execute the duty. And if the duties of the second office are performed, and the law has fixed the compensation which it deems just for such services, it cannot be material whether they are rendered by one holding another office or not, provided they are faithfully discharged." The United States *vs.* White and others, April term, 1851.

That case is very similar to the one before us, and is, no doubt, correctly decided. It shows that the present claimant is entitled to re-

ceive for his services, as acting Secretary of the Treasury and as acting Secretary of State, the same compensation, for the time he acted, which the law then allowed to the Secretaries of the Treasury and of State, respectively.

The petition further states that, from the 21st of June to the 7th of August, 1831, the claimant received a compensation as Secretary of the Treasury; but that during that time, he did not receive his salary as chief clerk. The circumstance here stated will be taken into consideration, when an account shall be taken from the evidence, of the amount to which the claimant is entitled.

The solicitor refers us to certain acts of Congress of 1839 and 1842, (5 Stat. at Large, 349, 510, 525.) It is only necessary to observe, with respect to these acts, that they were not in force when the services now sued for were rendered.

Testimony is ordered to be taken in this case.

34th CONGRESS, 1st Session. } HO. OF REPRESENTATIVES. { REPORT C. C. No. 18.

J. D. HOLMAN, EXECUTOR OF JESSE B. HOLMAN.

MAY 16, 1856.—Reported from the Court of Claims. Committed to a Committee of the Whole House and ordered to be printed.

J. D. HOLMAN, EXECUTOR, *vs.* THE UNITED STATES.

To the honorable the Senate and House of Representatives of the United States in Congress assembled:

The Court of Claims respectfully presents the following documents as the report in the case of J. D. Holman, executor, *vs.* The United States:

1. The petition of the claimant to the Court of Claims.
2. Petition to Congress with accompanying documents, referred to the Court of Claims by the House of Representatives, and returned to that House.
3. Two original letters exhibited as evidence in the case transmitted to the House of Representatives.
4. Petition for rehearing by claimant.
5. Claimant's brief.
6. Opinion of the Court on both hearings.

By order of the Court of Claims.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Court, at Washington, this seventh day of May, A. [L. S.] D. 1856.

SAMUEL H. HUNTINGTON,
Chief Clerk Court of Claims.

J. D. HOLMAN, Ex'r of JESSE B. HOLMAN, dec'd,
vs.
THE UNITED STATES.

To the honorable the Judges of the Court of Claims:

Your petitioner, J. D. Holman, respectfully represents, that his brother, Jesse B. Holman, died in the State of Alabama, in the year 1853, and that letters of administration, with the will annexed, upon his estate have been granted your petitioner by the judge of probate for Marengo county, in said State.

Your petitioner further shows, that the Hon. Balie Peyton, late envoy extraordinary and minister plenipotentiary of the United States to Chile, was officially recognised by the latter government on the 16th day of February, 1850; that Robert M. Walsh was appointed

his secretary of legation, who subsequently declined, and B. Rowan Hardin appointed in his place; that the said Hardin never reached his post, but died, as your petitioner is informed and believes, at Panama, on his way to Chile, on the 24th of June, 1850; that the said Jesse B. Holman was commissioned to this position, and that upon his arrival at his post he found a very large accumulation of business in the office of the legation, in consequence of the long absence of the proper officer whose duty it was to discharge it; that the office was otherwise much out of order, there being no index to the records, in consequence of which there was much difficulty and confusion in managing the business of the legation; that the said Jesse entered zealously into the labor, which was of a very onerous character in arranging the papers and records of the office, and making the necessary indexes therefor; that he succeeded in bringing up the business that was in arrear, by instituting a perfect arrangement of the records and papers, and completing indexes for the business transacted under Mr. Peyton's and his predecessor, Mr. Barton's, administration, and for a very large portion of the ancient records of the office, though he was prevented from finally completing the indexes by failing health and necessary attention to the current business of his office; that a petition praying compensation for these services was presented to the Senate of the United States during the last Congress, which being referred to the Committee on Foreign Affairs, the said committee reported, July 28, 1854, a bill for his relief, No. 477, allowing the said Jesse the sum of seven hundred and sixteen dollars sixty-seven cents, "for extra clerical duties, from the 16th of February to the 24th of June, 1850." That this report and bill having been passed by the Senate, was sent to the House of Representatives, and laid on the Speaker's table, where, from want of time, it was not acted on; all of which will appear by reference to the papers in said case, now filed in this honorable court by virtue of the resolution of the House of Representatives, which reference gives, under the act, jurisdiction of this case to your honorable court.

Your petitioner therefore prays that the said amount be adjudged and decreed to be paid to him, and that the necessary proceedings be had for that purpose.

P. PHILLIPS,
Solicitor for J. D. Holman, Adm'r.

STATE OF ALABAMA,
Marengo County, September 12, *A. D.* 1853.

To the honorable the Senate and House of Representatives of the United States in Congress assembled:

The petition of J. B. Holman, late secretary of legation to Chile, respectfully showeth unto your honorable bodies, that the Hon. Balie Peyton, late envoy extraordinary and minister plenipotentiary of the United States to Chile, was presented to the government of Chile, and recognised in his official character, on the 16th day of

February, 1850; that at the time of the appointment of said minister, Robert M. Walsh, esq., was appointed secretary of legation to Chile, who declined, and B. Rowan Hardin, esq., was appointed to succeed him; and that, as your petitioner was informed and believes, the said Hardin died at Panama on his way to Chile; and that on the 24th day of June, 1850, your petitioner was commissioned as secretary of legation to Chile in the stead of the said Hardin. And your petitioner further showeth, that on his arrival in Chile he found that a large amount of business had accumulated in the office of the legation, in consequence of the non-arrival of his said predecessors, and which properly should have been performed by them, all of which was done by your petitioner; that this unfinished business consisted chiefly in recording in the books of the legation the papers constituting the despatches and letters of the minister during the interval between his arrival in Chile and the arrival of your petitioner, whilst there was no secretary present, as well as in indexing the same, and which constituted, by far, the most severe and laborious portion of the official duties of a secretary of legation.

And your petitioner further showeth, that prior to his connexion with the legation in Chile none of the records of said legation had been indexed; and he made a full and complete index, not only to the papers of the late minister, Mr. Peyton, but also to those of his immediate predecessor, Mr. Barton, as well as to a considerable portion of the early records, but that your petitioner was not able to finish this work in consequence of ill health and the large accumulation of new business in the legation which required his constant attention.

In consideration of all which, your petitioner would most respectfully represent unto your honorable bodies that he has performed a large amount of labor which properly devolved on his predecessors in office, and which would have been equal to at least two-thirds of the amount of their official duties had they been present to perform them, and that, consequently, he is justly entitled to receive extra compensation for the labors and duties so performed; and in support and corroboration of all which, your petitioner would beg leave to refer your honorable bodies to the letter of the Hon. Balie Peyton, herewith submitted, in which he says, after stating the facts in short, that "it appears to me (him) just and reasonable that you (I) should receive the compensation attached to the office;" but your petitioner *only* prays your honorable bodies to allow him a sum equal to two-thirds of the salary of a secretary of legation from the said 16th day of February, A. D. 1850, (the day of the presentation of the late minister to the government of Chile,) to the 24th of June, A. D. 1850, at which time the commission of your petitioner bears date and was issued, amounting to near the sum of five hundred dollars, to the full and just amount of which your petitioner verily believes he is entitled; and to sustain which, *again* refers to the accompanying letter of the Hon. Balie Peyton, which substantially certifies to all the facts of the case. And your petitioner therefore prays that your honorable bodies may allow him the said sum of five hundred dollars as

extra compensation in the premises, or such as may seem meet and just. And, as in duty bound, will ever pray, &c.

J. B. HOLMAN.

Test:

WM. M. BYRD, *Linden, Ala.*

References in support of this memorial: Hon. Balie Peyton, late minister to Chile; Lieutenants Gilliss and McRae, and Passed Midshipman Phelps, stationed at Washington city.

IN THE SENATE, *July* 28, 1854.

Mr. MASON made the following report:

The Committee on Foreign Relations, to whom was referred the memorial of J. B. Holman, late United States secretary of legation in Chile, praying additional compensation for extra clerical duties performed by him, have had the same under consideration, and now report:

It is stated in the memorial that from the 16th February, 1850, to the 24th June following, owing to the declension of the office by Mr. Walsh, and the death of Mr. Hardin, his successor, before reaching the post, there was, in fact, no secretary to the United States legation in Chile, and that, consequently, upon the appointment of the memorialist to that office on the 24th June, 1850, in addition to the current duties of the office, he had also to perform all the unfinished business which had accrued from the 16th February preceding, and which consisted in recording in the books of the legation the despatches and letters during the interval above mentioned, whilst there was no secretary present, as well as in indexing the same; and further, that prior to his connexion with that legation, none of its records had been indexed, and that he made a full and complete index, not only to the papers of the late minister, Mr. Peyton, but also to those of his immediate predecessor, Mr. Barton, as well as a considerable portion of the early records, which he also would have completed but for ill health, and the large accumulation of new business in the legation which required his constant attention.

These statements are fully sustained by a letter from Mr. Peyton, our then minister in Chile, dated May 24, 1853, addressed to the memorialist, and also by a letter from the Secretary of State, addressed to the Hon. Thomas H. Bayly, chairman of the Committee on Foreign Affairs of the House of Representatives, dated February 9, 1854. In his letter, Mr. Peyton says: "Inasmuch as you performed the labor, it appears to me just and reasonable that you should receive the compensation attached to the office," &c. And further: "This allowance is rendered more proper on account of the great expense in coming to and returning from Chile, which is but little less than one thousand dollars for the round trip." In his letter above mentioned

the Hon. Secretary of State says: "I have to inform you that Mr. Holman has correctly stated the fact of the absence, for several months, of any secretary to the legation at Santiago, and from the correspondence of Mr. Peyton, envoy extraordinary and minister plenipotentiary to the republic of Chile, it is evident that Mr. Holman was taxed with the performance of onerous duties, which had accumulated prior to his own appointment."

"In this view of the case I have no hesitation in stating that the department regards Mr. Holman justly entitled to extra compensation for these extraordinary services."

In view of all the circumstances of this case, the committee are of opinion, that the memorialist is entitled to receive the compensation of secretary of legation, whose duties he is shown to have actually performed from the 16th February, 1850; and inasmuch as from that time to the 24th June, 1850, when he formally entered upon his official duties, that compensation had not been paid to any other person, no injustice can result to the government from its allowance to him; they, therefore, report a bill in his favor, and recommend its passage.

Mr. Mason, from the Committee on Foreign Relations, submitted a report, (No. 375,) accompanied by the following bill; which was read and passed to a second reading:

A BILL for the relief of J. B. Holman.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Treasury be, and he is hereby, directed to pay, out of any money in the treasury not otherwise appropriated, to J. B. Holman, late United States secretary of legation, in Chile, the sum of seven hundred and sixteen dollars and sixty-seven cents, it being for compensation for extra clerical duties performed by him in bringing up the records of the legation, from the sixteenth of February to the twenty-fourth of June, eighteen hundred and fifty, during which period there was no secretary to said legation.

DEPARTMENT OF STATE,
Washington, February 9, 1854.

SIR: In reply to that part of your letter of the 8th instant, which relates to Mr. J. B. Holman's claim for compensation for services rendered, as secretary of legation at Santiago, in the discharge of clerical duties left unperformed by his predecessors, I have to inform you that Mr. Holman has correctly stated the fact of the absence, for several months, of any secretary to the legation at Santiago; and from the correspondence of Mr. Peyton, envoy extraordinary and minister plenipotentiary to the republic of Chile, it is evident that Mr. Holman was taxed with the performance of onerous duties, which had accumulated prior to his own appointment.

In this view of the case, I have no hesitation in stating that the department regards Mr. Holman justly entitled to extra compensation for these extraordinary services.

The papers relating to his claim are herewith returned.

I have the honor to be, sir, very respectfully, your obedient servant,

W. L. MARCY.

Hon. TH. H. BAYLY,
Chairman of the Committee on Foreign Affairs, H. R.

LEGATION OF THE UNITED STATES,
Santiago, Chile, May 24, 1853.

SIR: As you contemplate leaving for the United States in a few days, on account of ill health, I deem it but an act of justice to state that, on your arrival at the legation, there was a great deal of extra labor imposed upon you in consequence of the non-arrival of your predecessors, Mr. Walsh, who resigned, and Mr. Hardin, who died at Panama; and, inasmuch as you performed the labor, it appears to me just and reasonable that you should receive the compensation attached to the office. I am sure that if I had employed another person the government would have defrayed the expense, and the duties would not have been so well and satisfactorily performed.

This allowance is rendered more proper on account of the great expense in coming to and returning from Chile, which is but little less than one thousand dollars for the round trip.

Hoping that you may soon be restored to health, and wishing you a pleasant voyage home, I remain, very truly and respectfully, your obedient servant,

BALIE PEYTON.

J. B. HOLMAN, Esq.,
Secretary of U. S. legation in Chile.

Executor JESSE B. HOLMAN *vs.* UNITED STATES. } Petition for rehearing or modification of the decree.

This case, when presented to the Senate, received the favorable report of the Committee on Foreign Relations, who reported a bill which passed the Senate. It was supported by the evidence of our minister, Balie Peyton, and by Secretary Marcy, who concludes his letter to the committee by stating "that the department regards Mr. Holman *justly entitled* to extra compensation for these extraordinary services." The bill was sent to the House, where it was not acted on, except to refer it to this court. These statements are made as a justification for submitting the case without any observation or argument, supposing it to be one not requiring any, and that the court, if it found any difficulty in the way, would hear me.

The opinion of the court rests alone upon the act of August 23, 1842, and I admit, that if the government had merely permitted itself to be

sued in the ordinary tribunals, no recovery could be had against it. *This would be equally the case if the act of* 1842 *had no existence*, because the party would have had no contract which could have been enforced beyond the amount of his salary as fixed by law.

The act was not intended to declare that extra services would never be paid for by the government, but only that the department should not be allowed to make such compensation. On the contrary, the act recognises that there will be such cases, but they were to be provided for by law; in which case the appropriation was explicitly to set forth that it was for extra compensation.

When the petitioner presented his claim to Congress, he knew his claim was such a one as could not be enforced if the government were suable, and this we must presume *was equally well known to Congress when the Senate passed the bill, and the House referred the claim to this court.* The claim rests upon the equity that this petitioner, by the desire of the minister, performed the duties which two preceding appointees failed to perform, because they never entered upon the discharge of their duties, and the amount stated in the bill *is the precise amount which the government would have had to pay to these appointees had they entered upon those duties.*

I desire, therefore, that the judgment should be amended, so that after stating there was no legal obligation under the act of 1842, the character of the services and their value, as appears from the proof, may be set forth, that upon this finding Congress may act upon the equitable character of this claim, as they have uniformly done upon this class of cases; and thus *give some force and effect to the order of reference made to the court.*

I do not understand this case as coming under the influence of the decision made by the court, that if a case is a mere appeal to the bounty of the government, the court would not take jurisdiction, although referred. This is a *claim* or *demand*, not an appeal to charity. The party alleges that in good faith the government owes the money demanded, and ought to pay it. *When Congress refers such a claim or demand*, I respectfully submit that the court should ascertain the truth of the facts stated in the case thus referred, and thus assist Congress in their deliberation whether they would afford relief. I therefore repeat, I do not object to the decision, as far as it brings to notice the act of 1842, but that it does not do what the sole object of the reference required, to wit, ascertain the length of service and its value, and the equitable circumstances on which it is based.

I therefore request that this modification should be made, or the court would hear me on the point of jurisdiction.

All of which is respectfully submitted.

P. PHILLIPS,
Solicitor, Executor of Holman.

Hon. the CHIEF JUSTICE
of the Court of Claims.

James B. Holman, executor of Jesse B. Holman.

The claim for extra compensation as secretary of legation to Chile, rests upon the performance of services which should have been rendered by two former secretaries, one of whom had died, and the other resigned.

The claim is sustained by the practice of the government, and the payment recommended by the minister plenipotentiary and Secretary of State. (See letters of Mr. Peyton and Mr. Marcy on file.)

The Committee on Foreign Relations in the Senate made a report (No. 375) to accompany bill No. 477, on the 28th of February, 1854, which passed the Senate, and was sent to the House of Representatives, where, without being acted on, it was referred to this court. (See report and bill on file.

The facts are all ascertained, and there would seem to be no reason why the court should not now decide upon it without transferring it to the trial docket.

P. PHILLIPS,
Solicitor for Petitioner.

OCTOBER 5, 1855.

HOLMAN, ADMINISTRATOR WITH THE WILL ANNEXED,
vs.
THE UNITED STATES.

Opinion of the court, delivered by Blackford, J.

The petition is attached to this opinion. It is alleged that the testator, Jesse B. Holman, was commissioned subsequently to the 24th of June, 1850, secretary of legation to Chile; that, upon his arrival at his post, he found a very large accumulation of business in the office of the legation, in consequence of the long absence of the proper officer whose duty it was to discharge it; that the office was otherwise much out of order, there being no index to the records, in consequence of which there was much difficulty and confusion in managing the business of the legation; that the said Jesse entered zealously into the labor, which was of a very onerous character, in arranging the papers and records of the office, and making the necessary indexes therefor; that he succeeded in bringing up the business that was in arrear, by instituting a perfect arrangement of the records and papers, and completing indexes for the business transacted under Mr. Peyton's, and his predecessor, Mr. Barton's, administration, and for a very large portion of the ancient records of the office, though he was prevented from finally completing the indexes by failing health and necessary attention to the current business of his office.

The petitioner, for the above extra services, claims from the government the sum of seven hundred and fifty dollars.

The testator was a public officer with a regular salary.

There is an act of Congress of the 23d of August, 1842, as follows:

"SEC. 2. *And be it further enacted*, That no officer in any branch of the public service, or any other person whose salary, pay, or emoluments is or are fixed by law or regulations, shall receive any additional pay, extra allowance, or compensation, in any form whatever, for the disbursement of public money, or for any other service or duty whatsoever, unless the same shall be authorized by law, and the appropriation therefor explicitly set forth that it is for such additional pay, extra allowance, or compensation."—(5 Stat. at Large, 510.)

This statute applies to the case before the court.

The claimant has no demand against the government that can be sustained by this court for the extra services stated in the petition.

No order for testimony will be made in this case.

After the foregoing opinion was delivered, the claimant filed a petition for a modification of the decision, or for leave to argue the question relative to the jurisdiction of the court. The leave asked for was granted, and the argument heard.

Our former opinion in this case is founded on an act of Congress of 1842, which is copied in that opinion. The claimant contends that that act applies only to the different departments of the government; but we do not agree with him. The language of the act is general, and we have no authority to limit its operation. We therefore adhere to our former decision against the claim.

The case, however, having been referred to this court by the House of Representatives, we have, on the motion of the claimant, examined the papers referred. The testimony consists of two letters: one from the American minister at Chile, Mr. Peyton, to the testator, dated May 24, 1853; and the other from the Secretary of State, Mr. Marcy, to the chairman of the Committee on Foreign Affairs of the House of Representatives, dated February 9, 1854. There are also among the papers referred from the House, a report of the Committee on Foreign Relations of the Senate, dated July 28, 1854, in favor of the claim, and a bill, which accompanied the report, allowing the testator seven hundred and sixteen dollars and sixty-seven cents, for the extra services mentioned in the bill. On the 9th of February, 1855, the bill passed the Senate, and was sent to the House of Representatives for concurrence. On the 3d of March, 1855, the case was referred, by the House of Representatives, to this court.

The two letters aforesaid are the only evidence. The originals are returned to the House of Representatives.

The claimant has no legal claim, and must depend upon the discretion of Congress.

J. D. HOLMAN, executor of JESSE B. HOLMAN, dec'd,
vs.
THE UNITED STATES.

To the honorable the Judges of the Court of Claims:

Your petitioner, J. D. Holman, respectfully represents, that his brother, Jesse B. Holman, died in the State of Alabama, in the year 1853, and that letters of administration, with the will annexed, upon his estate, have been granted your petitioner by the judge of probate for Marengo county, in said State.

Your petitioner further shows, that the Hon. Balie Peyton, late Envoy Extraordinary and Minister Plenipotentiary of the United States to Chile, was officially recognised by the latter government on the 16th day of February, 1850; that Robert M. Walsh was appointed his secretary of legation, who subsequently declined, and B. Rowan Hardin appointed in his place; that the said Hardin never reached his post, but died, as your petitioner is informed and believes, at Panama, on his way to Chile, on the 24th of June, 1850; that the said Jesse B. Holman was commissioned to this position, and that upon his arrival at his post he found a very large accumulation of business in the office of the legation, in consequence of the long absence of the proper officer whose duty it was to discharge it; that the office was otherwise much out of order, there being no index to the records, in consequence of which there was much difficulty and confusion in managing the business of the legation; that the said Jesse entered zealously into the labor, which was of a very onerous character, in arranging the papers and records of the office, and making the necessary indexes therefor; that he succeeded in bringing up the business that was in arrear, by instituting a perfect arrangement of the records and papers, and completing indexes for the business transacted under Mr. Peyton's, and his predecessor, Mr. Barton's, administration, and for a very large portion of the ancient records of the office, though he was prevented from finally completing the indexes by failing health and necessary attention to the current business of his office; that a petition, praying compensation for these services, was presented to the Senate of the United States during the last Congress, which being referred to the Committee on Foreign Affairs, the said committee reported, July 28, 1854, a bill for his relief, No. 477, allowing the said Jesse the sum of seven hundred and sixteen dollars and sixty-seven cents, "for extra clerical duties from the 16th of February to the 24th of June, 1850." That this report and bill having been passed by the Senate, was sent to the House of Representatives and laid on the Speaker's table, where, from want of time, it was not acted on; all of which will appear by reference to the papers in said case, now filed in this honorable court by virtue of the resolution of the House of Representatives, which reference gives, under the act, jurisdiction of this case to your honorable court.

Your petitioner therefore prays that the said amount be adjudged and decreed to be paid to him, and that the necessary proceedings be had for that purpose.

P. PHILLIPS,
Solicitor for J. D. Holman, Adm'r.

34th CONGRESS, 1st Session. } HO. OF REPRESENTATIVES. { REPORT C. C. No. 19.

JOHN C. HALE.

MAY 16, 1856.—Reported from the Court of Claims. Committed to a Committee of the Whole House, and ordered to be printed.

JOHN C. HALE *vs.* THE UNITED STATES.

To the honorable the Senate and House of Representatives of the United States in Congress assembled:

The Court of Claims respectfully presents the following documents as the report in the case of John C. Hale *vs.* The United States:

1. The petition of the claimant.
2. Solicitor's brief.
3. Opinion of the Court.

By order of the Court of Claims.

In testimony whereof, I have hereunto set my hand and affixed the [L. S.] seal of said court, at Washington, this seventh day of May, A. D. 1856.

SAMUEL H. HUNTINGTON,
Chief Clerk Court of Claims.

JOHN C. HALE *vs.* THE UNITED STATES.

To the honorable the Court of Claims of the United States, sitting in Washington:

Your petitioner, John C. Hale, of Hot Springs county, Arkansas, respectfully represents: That, under the 5th section of the act of April 12, 1814, chapter 52 of the acts of the second session of the 13th Congress, and in right of John Percifull, deceased, the original settler, he claims a right of pre-emption to the southwest quarter of section 33, in township 2 south, range 19 west of the 5th principal meridian, on which are situated the celebrated Hot Springs of the county aforesaid.

Your petitioner avers that the worthy old pioneer, John Percifull, settled on the said tract of land as early as 1808 or 1809, and continued to cultivate and hold possession of the same, by himself or his tenants, without interruption, until his death in the year 1835 or '36. That after the death of said Percifull, his widow and sole heir, Sarah and David Percifull, held continuous possession of the same until they sold their right to this petitioner, who continues the unbroken possession, as their assignee, down to the present hour.

Your petitioner owns and holds the right of the said John Percifull by virtue of a valid assignment from the said widow and heir, and is ready to prove the same when it may be required. The consideration paid was the sum of thirteen thousand dollars. In addition to this expenditure, your petitioner has improvements on the land which have cost the further sum of ten thousand dollars. He admits that Henry M. Rector, of Arkansas, is entitled, under certain conditions, to three-eighths of the claim herein represented.

Your petitioner further represents that at the time of the passage of the said act of 1814, the territory south of the Arkansas river, in which the land aforesaid is situated, was embraced within the county of Arkansas, one of the organized counties of the Territory of Missouri; and the impression universally prevailed that the said lands were public lands, subject to the right of pre-emption under the act aforesaid. It was, however, subsequently decided at the General Land Office of the United States that the Indian title to said lands not being extinguished, the same were not subject to the right of pre-emption. By the treaty of August 24, 1818, between the United States and the Quapaw Indians, the Indian title was extinguished, and the said lands became the unincumbered property of the United States.

On the 20th April, 1832, at the 1st session of the 22d Congress, section 3, chapter 70, Congress enacted "*that the Hot Springs in said Territory, together with four sections of land, including said springs, as near the centre thereof as may be, shall be reserved for the future disposal of the United States, and shall not be entered, located, or appropriated for any other purpose whatever.*"

On the 1st of March, 1843, (acts of the 3d session, 27th Congress, chapter 50, section 3,) it was enacted "*that every settler on the public lands south of the Arkansas river shall be entitled to the same benefits accruing under the provisions of the pre-emption act of one thousand eight hundred and fourteen, as though they had resided north of said river.*" The object of this latter provision was to confirm the pre-emption rights of settlers on this territory, notwithstanding the existence of the Indian title in 1814. This is apparent from the whole tenor of the said act of 1843, from the history of the Territory in question, and from the report of the committee of the Senate of the United States accompanying said act when it was first presented to said body. (Senate Report No. 36, at the 2d session, 27th Congress.)

By virtue of the three acts aforesaid, or rather by virtue of the first and last of said acts, and by virtue of the continued and uninterrupted possession of the said John Percifull, deceased, his tenants, heirs, and assignees, from 1814, and long previously, down to the present time, your petitioner claims the right to enter the said quarter-section of land at the minimum price, and to obtain a patent for the same from the government of the United States.

The survey of the lands in question did not take place until early in the year 1838. Within a few months after that survey, Sarah and David Percifull, the widow and heir of John Percifull, attempted to prove their pre-emption. But inasmuch as the reservation made by the act of 20th April, 1832, was then in full force, and especially as

the Indian title to said lands prevented the operation of the act of 1814, the said application was rejected.

In due time after the passage of the act of March 1, 1843, Sarah, the widow of said Percifull, offered to prove the right of pre-emption in the heirs of said John, and tendered the sum of two hundred dollars in gold, demanding to enter the same under the laws aforesaid. Her application was again rejected.

Your petitioner further represents that in the year 1828, the said John Percifull, then living, leased his improvements on the said quarter-section of land to one Ludovicus Belding for the term of five years. That under this lease, as the tenant of Percifull, the said Belding cultivated the said land in the year 1829, and then, before the expiration of his said lease, assigned the same to a third person. That in the year 1831 the said lease came again into the hands of the said John Percifull, who continued to occupy the place until his death as aforesaid. That afterwards, long after the said Belding had ceased to occupy or cultivate said land by himself or any one for him, the heirs of said Belding set up a claim for a right of pre-emption in said land under the act of 29th May, 1830, (1st session 21st Congress, chapter 208.)

Your petitioner further states that another claim was set up by Henry M. Rector, in the name of one Francis Langlois, pretending to have a valid New Madrid location, under the act of February 17th, 1815, (chapter 45, acts of the third session 13th Congress,) and covering the land in question. But no valid location was ever made in pursuance of that law, or at least none which has the effect to overreach the pre-emption claim herein set up under the said law of 1814.

On the 23d of October, 1850, in view of the conflicting claims to the said land under the various laws mentioned, the Commissioner of the General Land Office, by the direction of the Secretary of the Interior, ordered the register and receiver of the land office at Washington, Arkansas, to give notice to the respective claimants, hear the testimony which might be presented by them, and report the same back to him with their judgment of the result. In pursuance of this order, the parties had notice to appear before the said register and receiver on the 20th day of January, 1851. There was no process by which witnesses could be forced to attend; and, unfortunately, some of petitioner's witnesses happened to be out of the State, and from the shortness of the notice none of them appeared on the day named, although your petitioner used all proper diligence in endeavoring to procure their attendance. Two of these witnesses, however, appeared at the land office before the examination was concluded, and your petitioner asked that said witnesses might be examined; but the said register and receiver absolutely refused to receive their testimony, alleging that they had already disposed of the Percifull claim, and were then examining the Belding and Rector claim; your petitioner then asked that the said witnesses should be heard to testify in opposition to the claims then under examination; but this also was refused. Your petioner then insisted that the refusal to hear said testimony should be entered on their record, which they refused. But the said officers promised to send up to the General Land Office a separate statement

Your petitioner owns and holds the right of the said John Percifull by virtue of a valid assignment from the said widow and heir, and is ready to prove the same when it may be required. The consideration paid was the sum of thirteen thousand dollars. In addition to this expenditure, your petitioner has improvements on the land which have cost the further sum of ten thousand dollars. He admits that Henry M. Rector, of Arkansas, is entitled, under certain conditions, to three-eighths of the claim herein represented.

Your petitioner further represents that at the time of the passage of the said act of 1814, the territory south of the Arkansas river, in which the land aforesaid is situated, was embraced within the county of Arkansas, one of the organized counties of the Territory of Missouri; and the impression universally prevailed that the said lands were public lands, subject to the right of pre-emption under the act aforesaid. It was, however, subsequently decided at the General Land Office of the United States that the Indian title to said lands not being extinguished, the same were not subject to the right of pre-emption. By the treaty of August 24, 1818, between the United States and the Quapaw Indians, the Indian title was extinguished, and the said lands became the unincumbered property of the United States.

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On the 1st of March, 1843, (acts of the 3d session, 27th Congress, chapter 50, section 3,) it was enacted "*that every settler on the public lands south of the Arkansas river shall be entitled to the same benefits accruing under the provisions of the pre-emption act of one thousand eight hundred and fourteen, as though they had resided north of said river.*" The object of this latter provision was to confirm the pre-emption rights of settlers on this territory, notwithstanding the existence of the Indian title in 1814. This is apparent from the whole tenor of the said act of 1843, from the history of the Territory in question, and from the report of the committee of the Senate of the United States accompanying said act when it was first presented to said body. (Senate Report No. 36, at the 2d session, 27th Congress.)

By virtue of the three acts aforesaid, or rather by virtue of the first and last of said acts, and by virtue of the continued and uninterrupted possession of the said John Percifull, deceased, his tenants, heirs, and assignees, from 1814, and long previously, down to the present time, your petitioner claims the right to enter the said quarter-section of land at the minimum price, and to obtain a patent for the same from the government of the United States.

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the Indian title to said lands prevented the operation of the act of 1814, the said application was rejected.

In due time after the passage of the act of March 1, 1843, Sarah, the widow of said Percifull, offered to prove the right of pre-emption in the heirs of said John, and tendered the sum of two hundred dollars in gold, demanding to enter the same under the laws aforesaid. Her application was again rejected.

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Your petitioner further states that another claim was set up by Henry M. Rector, in the name of one Francis Langlois, pretending to have a valid New Madrid location, under the act of February 17th, 1815, (chapter 45, acts of the third session 13th Congress,) and covering the land in question. But no valid location was ever made in pursuance of that law, or at least none which has the effect to overreach the pre-emption claim herein set up under the said law of 1814.

On the 23d of October, 1850, in view of the conflicting claims to the said land under the various laws mentioned, the Commissioner of the General Land Office, by the direction of the Secretary of the Interior, ordered the register and receiver of the land office at Washington, Arkansas, to give notice to the respective claimants, hear the testimony which might be presented by them, and report the same back to him with their judgment of the result. In pursuance of this order, the parties had notice to appear before the said register and receiver on the 20th day of January, 1851. There was no process by which witnesses could be forced to attend; and, unfortunately, some of petitioner's witnesses happened to be out of the State, and from the shortness of the notice none of them appeared on the day named, although your petitioner used all proper diligence in endeavoring to procure their attendance. Two of these witnesses, however, appeared at the land office before the examination was concluded, and your petitioner asked that said witnesses might be examined; but the said register and receiver absolutely refused to receive their testimony, alleging that they had already disposed of the Percifull claim, and were then examining the Belding and Rector claim; your petitioner then asked that the said witnesses should be heard to testify in opposition to the claims then under examination; but this also was refused. Your petioner then insisted that the refusal to hear said testimony should be entered on their record, which they refused. But the said officers promised to send up to the General Land Office a separate statement

of the facts; and such a statement was made out and received by them as correct and proper, but the same has never reached the General Land Office. Your petitioner has filed in the General Land Office affidavits stating these facts; yet he believes they have never received any attention, either from the Commissioner or the Secretary of the Interior.

Your petitioner expressly avers that the said witnesses were men of good character, worthy of full credit, and were ready from their own knowledge to prove all the facts necessary to establish the right of John Percifull, deceased, to a pre-emption on the land aforesaid under the said act of 1814. Your petitioner has perpetuated their testimony, or such of it as could be obtained, in a court of chancery in Arkansas, and is ready to produce it when required.

Notwithstanding this unjust and oppressive conduct of said register and receiver, such was the strength of your petitioner's case, that the receiver decided in his favor, while the register decided against him.

In the case of Belding's heirs, the receiver decided that as there was indubitable proof of Belding's occupancy in 1829 under a written lease from John Percifull, binding himself to make improvements for the benefit of his lessor, his heirs were not entitled to a pre-emption under the said act of 1830. The register, however, ignoring the full and ample proof of Belding's relation to Percifull as his lessee, decided that his heirs were entitled to a pre-emption in their own right.

Upon the receipt of the report of the register and receiver at the General Land Office in Washington, D. C., it was decided that the heirs of Belding should be allowed to make an entry, although, as your petitioner understands, it was at the same time asserted that they were not entitled to a pre-emption and could not obtain a patent. The Secretary of the Interior, in his letter to the Commissioner of the General Land Office dated November 21, 1851, says, in reference to this entry: "the government will still hold the ultimate power of protecting its own rights, while the claimants will merely be placed in a position to contest the adverse claims of others to the same lands." Armed with the receiver's receipt, thus unjustly and illegally given, the heirs of Belding, under the statutes of Arkansas, have brought an action of ejectment against your petitioner; and while the government withholds the patent from the rightful owner, the spectacle may possibly be presented of a lessee setting up his possession against his acknowledged lessor, and ejecting him from property which he has held uninterruptedly for near half a century.

Your petitioner insists that, as the assignee of John Percifull's rights, he is entitled to a pre-emption under the act of 1814, as revived and re-established by the act of March 1, 1843; that his equity is superior to that of any other claimant, and that he is entitled to a patent upon payment of the minimum price of the public land. He further insists that even if he were not able to prove, as he avers he is able and ready to prove, his pre-emption right under the said act of 1814, the entry allowed to the heirs of said Belding, if it be adjudged valid, ought to inure to his benefit, and he ought to be allowed to receive the patent upon the same.

But the General Land Office and the Department of the Interior

have finally decided that neither your petitioner nor the said heirs of Belding are entitled to a patent, although the entry of the said Belding's heirs is still permitted to remain uncancelled with the sole effect of harassing this petitioner, without any possible advantage to the government. The Secretary of the Interior and the Commissioner of the General Land Office, as well as the Attorney General of the United States, seem to have taken for granted, without much examination, that the act of reservation, passed in 1832, is still in force, not repealed by the act of 1843; and hence they have almost entirely overlooked the claim of John Percifull, and the important facts which established it as superior to all the opposing claims.

If this court should be of opinion that the act of 1843 supersedes and annuls the reservation made by the act of 1832, as against a valid pre-emption under the act of 1814, then this petitioner appeals to the evidence on file in the land office at Washington, Arkansas, and in the General Land Office at Washington, D. C., and also to other legitimate proofs which he may be able to adduce in addition, for the establishment of his right to a pre-emption and the issuance of a patent in pursuance of the same. He prays that his rights in the premises may be duly investigated by the court, and if established to their satisfaction upon the law and the facts, that his claim may be reported to Congress for such action as may be necessary, and especially that the entry made by Belding's heirs be cancelled as illegal and void, and that the patent issue to your petitioner upon the payment of the legal price of the land.

In accordance with the rules of this court, the petitioner states that no other person, except the said Henry M. Rector, is interested in this claim. That he has never applied to Congress for relief. That he has applied to the General Land Office and to the Department of the Interior; but the executive officers seem to have paid little attention to his representations, and refuse him all relief. He therefore prays the judgment of this court.

JOHN C. HALE.

BROWN, STANTON and WALKER, *Attorneys for petitioner.*

DISTRICT OF COLUMBIA,
City of Washington.

Before me, Benjamin K. Morsell, a justice of the peace in and for the city and District aforesaid, on this the 14th day of July, 1855, personally appeared John C. Hale, the foregoing petitioner, and made oath, in due form of law, that the facts stated in the foregoing petition are true, to the best of his knowledge and belief.

B. K. MORSELL, *J. P.*

Brief of the U. S. Solicitor.

This petitioner claims the right of pre-emption of a quarter section of land on which the Hot Springs of Arkansas are situated, under 5th section of act of 12th April, 1814, ch. 52, and the 3d section of act of 1st March, 1843, ch. 50. This claim was presented to the land officers

of the proper district in 1838, shortly after the surveys had been completed in that district, and rejected—

Because, 1st. The lands claimed were ceded to the United States by the Quapaw Indians in 1818, and were not subject to pre-emption under the act of 1814.

2d. Because, by the 3d section of the act of the 20th April, 1832, ch. 70, it is enacted "that the Hot Springs in said Territory (of Arkansas,) together with four sections of land, including said springs, as near the centre thereof as may be, shall be *reserved* for the *future* disposition of the United States, and shall not be *entered, located,* or *appropriated for any other purpose* whatever."

3d. Because, if it be admitted that the land is subject to pre-emption, the claimant has failed to make the proof of settlement, as required by the act of 1814.

It is admitted in the argument that at the date of this decision the land was not subject to pre-emption; but it is insisted that the 3d section of the act of 1843, by which it is provided "that every settler in the public lands *south* of the Arkansas river shall be entitled to the same benefits accruing under the provisions of the pre-emption act of 1814 *as though they had resided north of said river,*" repealed the act of 1832, and subjected the land in question to pre-emption, and that his claim ought subsequently to have been allowed.

In answer to the objections to the insufficiency of the proof of settlement, the claimant alleges improper conduct on the part of the register and receiver in refusing to hear proof, &c.; but it is not alleged that they acted fraudulently or from improper motives.

The authorities cited in the brief of claimant's counsel declare the decision of these officers to be final on the question of occupancy and settlement, when not impeached for fraud or unfairness.—Wilcox *vs.* Jackson, 13 Peters, 513.

On the question of the claimant's right of pre-emption, had settlement been duly proved, the decision of the Land Office is in accordance with the principles decided by the Supreme Court, in Stoddard *vs.* Chambers, 2 Howard, 284; Mills *vs.* Same, 8 ib. 345; Bissell *vs.* Penrose, 8 ib. 317; Gear *vs.* United States, 3 ib. 120; and in Wilcox *vs.* Jackson, 13 Peters, 513,—where it is decided that neither a law giving the right of location under a New Madrid certificate, nor one giving the right of pre-emption of public land within a specified district, authorizes the location or pre-emption of land which, prior to the time when such location or pre-emption was attempted, had been reserved from sale—for the obvious reason, that when, either because the land contained mines or salt springs, or other peculiar advantages, or because it was claimed by private individuals or was required for public purposes, it had been specially reserved from sale for future disposition, it was not to be supposed that general provisions of law having for their object the sale of land in the district, the greater part of which had no mine or salt springs, &c., would repeal reservations made for special reasons which were not referred to in the general act.

The case at bar illustrates the subject. Before any locations or sales were allowed in Arkansas, Congress, by the act of 1832, provided that the sites of the Salt Springs and Hot Springs, and the contiguous

land, shall not be subject to entry, &c., but shall be reserved for the future disposal of the United States. The second section authorizes the government to lease the Salt Springs for a term not exceeding five years, and directs the application of the rents. But as respects the Hot Springs, no authority is given to any one. In a few years, by a general law respecting pre-emptions, in which not a word is said about Hot Springs or Salt Springs, this property, which was thought of so much value as to be expressly excepted from sale or disposition in any way, is supposed to have become private property at the minimum price. That such a result was intended no one can contend, and it is the duty of the court to carry out the purposes of the law.

But if the fact and law were both for the petitioner, I should object to the court's entertaining his petition. He asks Congress to interfere by its action with questions affecting conflicting claims of individuals to specific property. It cannot be done fairly. The parties must be left to the courts, or to those officers who by law are invested with authority to hear all parties and decide between them.

M. BLAIR.

Opinion of the Court.

Opinion of the court delivered by Gilchrist, C. J.

The petitioner claims a right of pre-emption to a tract of land, including the Hot Springs, in the State of Arkansas. He alleges that John Percifull settled on the land in 1808 or 1809, and cultivated and held possesion of it until his death, in the year 1835 or 1836; that after his death, his widow and heir, Sarah and David Percifull, possessed the land until they sold their right to the claimant, who now retains possession of it as their assignee. The claimant admits that Henry M. Rector is entitled to three-eighths of the claim under certain conditions.

In the year 1828 John Percifull leased the improvements on the land to one Belding for the term of five years. In 1829 Belding assigned the lease, and in 1831 it returned into the possession of John Percifull. After Belding had ceased to occupy the land, his heirs set up a claim for a right of pre-emption under the act of May 20, 1830.

Another claim to the land was set up by Henry M. Rector, in the name of Francis Langlois, professing to have a valid New Madrid location under the act of February 17, 1815, covering the land in question. But the claimant alleges that no valid location was ever made in pursuance of that law, or none which would overreach his pre-emption claim under the act of 1814.

If there were no claims antagonistical to that derived from Percifull there would be no peculiar difficulty in determining the rights of the claimant. But whether he is entitled to a right of pre-emption cannot be determined without an investigation into the Belding and Rector claims. It may be that if those claims are laid aside, the Percifull claim is valid. But it may also appear that one or both of these claims are superior to the Percifull claim. We are asked to determine that the petitioner has the right to enter this quarter-section of land

at the minimum price, without having before us all the elements necessary to enable us to come to a satisfactory decision. While we are informed that there are three claimants to this land, how can we decide that the Percifull claim is the better claim, when the other claimants are not represented before us, and have had no opportunity of proving to us that a decision ought not to be made in favor of Hale? We have no power to make other persons parties to this proceeding; and without that power, and without hearing all the parties interested before us, we cannot determine which of them is entitled to the land. A decision, either in favor of or against this claimant, must be made upon a partial view of the case, and we could not say, with any certainty, that any result we might reach would be one which would satisfy ourselves, or which ought to satisfy Congress.

The opinion of the court, therefore, is, that we cannot decide this case, because we have not now before us the various parties who have an interest in the question, and because we have no power to make them parties to this proceeding.

34th CONGRESS, 1st Session. } HO. OF REPRESENTATIVES. { REPORT C. C. No. 20.

JOSEPH WHITE.

[To accompany bill H. R. C. C. No. 9.]

JUNE 28, 1856.
JULY 11, 1856.—Ordered to be printed.

The COURT OF CLAIMS submitted the following

REPORT.

JOSEPH WHITE *vs.* THE UNITED STATES.

To the honorable the Senate and House of Representatives of the United States in Congress assembled:

The Court of Claims respectfully presents the following documents as the report in the case of Joseph White *vs.* The United States:

1. The petition of the claimant.
2. Claimant's brief.
3. Documents transmitted from the Treasury Department relating to the claim, transmitted to the House of Representatives.
4. Memorial and accompanying documents referred by the House of Representatives to the Court of Claims, and now returned to the House in a separate envelope.
5. Opinion of the court, delivered by Chief Justice Gilchrist.
6. Bill for the relief of claimant.

By order of the Court of Claims.

In testimony whereof, I have hereunto set my hand and affixed the [L. S.] seal of said court, at Washington, this twenty-fifth day of June, A. D. 1856.

SAM'L. H. HUNTINGTON,
Chief Clerk Court of Claims.

To the honorable Court of Claims:

The petition of Joseph White, of the city of New York, late of Baltimore, respectfully represents: That from April, 1845, to June, 1849, he was navy agent for the port of Baltimore; that during that time he was also acting purser for the naval school at Annapolis,

Maryland, by the appointment of the Hon. Secretary of the Navy; in both of which offices your petitioner received and disbursed the public money, which money he received from the treasury as navy agent; and, in accounting with the Treasury Department for the same, he rendered separate accounts for the money disbursed by him in each of the offices aforesaid; and, being both navy agent and acting purser, charged himself in the latter capacity with the sum of $561 10, as received from himself as navy agent, but did not give himself *a corresponding credit in his account as navy agent.* That is to say, for one sum of $561 10, received, with other money, from the Treasury of the United States, your petitioner, erroneously and by mistake, charged himself a second time in his account for the quarter ending December 31, 1845; which error and mistake was discovered and noted by the accounting officers of the Treasury Department; and although your petitioner had quarterly accounts with the department from that time until June, 1849, still the aforesaid error was not allowed to him in any settlement of accounts, and was not made known to him by the Treasury Department.

Your petitioner further shows, that on a final settlement of his accounts, up to June, 1849, he charged and claimed various sums of money for services rendered and disbursements made by him as navy agent and acting purser, which were disallowed by the acccounting officers; and thereupon the Treasury Department caused a suit to be instituted against your petitioner, which suit was tried at the April term of 1851, in the United States circuit court at Baltimore, and more than $5,000, which had been disallowed by the accounting officers, was, under instructions of the court, allowed to your petitioner. On the trial of that cause your petitioner, for the first time, was made aware of his aforesaid mistake of $561 10 in his account of December 31, 1845, which item of account your petitioner was not allowed as a set-off in that suit, because he had omitted to claim the same at the Treasury Department; and, at the suggestion of the court, this item of account was withdrawn by your petitioner, and was not one of the items passed upon as being involved in the case then on trial.

Your petitioner further shows, that prior to the 22d day of November, 1854, your petitioner, by his attorney, Peter R. Stelle, applied to the Treasury Department, and requested payment of the said sum of $561 10, and in answer was informed by A. O. Dayton, Fourth Auditor, by letter dated November 22, 1854, that the accounting officers of the Treasury are of opinion, that, as suit was instituted by the United States against him, [your petitioner,] in which all his accounts, both as navy agent and acting pursur, were judicially investigated and decided upon, it would not be proper for them to reopen those accounts for the purpose of admitting a claim which is alleged to have been inadvertently omitted to be presented before the court and jury on the trial.

Your petitioner further says, that the aforesaid sum of $561 10 is due and owing from the United States to your petitioner, since the 31st of December, 1845; and your petitioner prays a judgment of this court for the said sum of $561 10, with interest thereon from the 9th of January, 1852, (the day on which the judgment of the circuit

court, in the case aforesaid, was paid to the United States,) until it be paid.

Your petitioner further shows, that in December, 1854, he memorialized the honorable the House of Representatives, and prayed for such relief, in the before-mentioned case, as that honorable body should think his case required; and a bill was reported by the House, No. 770, at the second session of the 33d Congress, for his relief; and by a general resolution of the House of Representatives, your petitioner was referred to the honorable Court of Claims.

All of which is respectfully submitted; and, as in duty bound, will ever pray, &c.

JOSEPH WHITE.

Sworn to before me, this 29th March, 1856.

R. E. STILWELL.

STATE OF NEW YORK, }
City and county of New York, } *ss:*

Joseph White, being sworn, says he has read the foregoing, and the facts set forth in the petition are true, to the best of his knowledge and belief.

JOSEPH WHITE.

Sworn to before me, the 29th day of March, 1856.

R. E. STILWELL,
U. S. Commissioner.

UNITED STATES OF AMERICA, }
Southern District of New York, } *ss:*

I, John W. Nelson, clerk of the circuit court of the United States of America for the southern district of New York, second circuit, do hereby certify, that I am well acquainted with the handwriting of R. E. Stilwell, whose name is subscribed to the annexed jurat, and that the signature to the same is in his proper handwriting; and I do further certify, that he was, at the time of signing the same, a United States commissioner, duly appointed by the circuit court of the United States of America for the southern district of New York, second circuit.

In testimony whereof, I have hereunto subscribed my name and affixed the seal of the said circuit court, this twenty-ninth day [L. S.] of March, in the year of our Lord one thousand eight hundred and fifty-six, and of the independence of these United States the eightieth.

J. W. NELSON, *Clerk.*

CHARLES E. SHERMAN,
JOHN ELY,
Attorneys for Petitioner.

TREASURY DEPARTMENT,
Second Comptroller's Office, February 15, 1855.

SIR: I transmit herewith a letter from the Fourth Auditor, explaining the claim of Joseph White, late navy agent, to be reimbursed the sum of $561 10, omitted by him in his accounts.

The statement of the Auditor is based on an examination of the official vouchers filed in his office, and accords entirely with my own recollection of the facts. When application was made, in November last, by the attorney of Mr. White, for payment of this omitted charge, I refused to entertain the question, upon the ground that no accounting officer has any right to correct an alleged error in the judgment of a court of the United States. A party injured by the judgment must seek redress from Congress.

I am, very respectfully, yours,
J. M. BRODHEAD, *Comptroller.*

Hon. WM. S. ASHE,
House of Representatives, Washington.

TREASURY DEPARTMENT,
Fourth Auditor's Office, February 15, 1855.

SIR: In answer to your inquiries respecting the sum of $561 10, which was claimed a few months since by Joseph White, esq., late navy agent, but not allowed, and for the allowance of which he has now applied to Congress, I have the honor to state, that in the year 1845, Mr. White, being both navy agent and acting purser for the Baltimore station, charged himself in the latter capacity with the sum in question as received from himself as navy agent, but did not give himself a corresponding credit in his account as agent. Upon the settlement, however, at this office, of his account as acting purser, the credit which he had omitted to claim was allowed him as navy agent, and was entered on the reconciling statement as one of the differences between his account as stated by himself, and the same account as stated at this office. This item having remained on the reconcilement for three years, without being claimed by White, was omitted on the last settlement of his account, which took place after he had ceased to be in office. A suit having been instituted against him for the balance which was found to be due from him, he still neglected to present a claim for this sum of $561 10, and judgment was given against him without any reference to it. In the month of November last the claim was made, for the first time, at this office, and Mr. White was informed that, as a suit had been instituted by the United States against him, in which all his accounts, both as navy agent and acting purser, had been judicially investigated and decided upon, it would not be proper, in the opinion of the accounting officers, to reopen those accounts for the purpose of admitting a claim which was alleged to have been inadvertently omitted to be presented before the court and jury on the trial.

Your obedient servant, A. O. DAYTON.

J. M. BRODHEAD, Esq.,
Second Comptroller of the Treasury.

Extract from the duly certified opinion of Judge Taney, in the case of the United States vs. Joseph White et al., in the United States circuit court, at Baltimore, April term, 1851, *as follows:*

"It is unnecessary to notice the remaining item of the defence, as it has been properly withdrawn by the defendant. And as the alleged error in omitting to credit himself in his navy agent's account with the sum of $561 10, which he transferred to his debit in his purser's account, does not appear on the face of the account, and as this credit was not presented and rejected, it is not open to investigation here. If the error exists, it may be discovered by an examination of the accounts at Washington, and without doubt would be readily corrected by the accounting officers."

JOSEPH WHITE *vs.* THE UNITED STATES. } *Brief of Claimant.*

This is a case which, if it had occurred between man and man, would be considered one of the *grossest fraud* on the part of the defendant; and if the United States is to be holden amenable to those moral obligations which attach to natural persons, and which lie at the very foundation of all public and private justice, such undoubtedly is the true character of the case; and the government agents who have figured in it, deserve the reprobation both of this court and of the public. The case, as shown by the public records, is as follows, and is proved by the accompanying evidence.

The claimant was a disbursing officer of the United States in the city of Baltimore, and in one of his quarterly accounts rendered to the proper accounting officers of the Treasury, as required by law, an error occurred *against himself* to the amount of $561 10.

By the laws organizing the Treasury Department, every disbursing officer's accounts, when rendered as aforesaid, are subject to the revision and final settlement of the said accounting officers. The account of the claimant, in which the aforesaid error occurred, was so revised, and *the said error well ascertained* and noted on the reconciling statement at the time, and was kept so noted, as an amount for which the claimant was entitled to a credit, for some three years; but no notice of said error was given to the claimant; but, on the contrary, it was kept entirely concealed from him, though he was in continual correspondence with the officers of the Treasury Department during the whole of said period, and up to the time of his retirement from office.

After the expiration of his term of office, the officers of the Treasury Department having refused him other credits to the extent of *many thousands of dollars* to which he was justly entitled, a suit was brought against him in the circuit court of the United States for the district of Maryland.

For the maintenance of said suit, on the part of the government against the claimant, the proper Auditor and Comptroller made out and certified according to law, and under the high official obligations

resting upon them, a statement, verified by the seal of the Treasury Department, to which the law ascribes the dignity of absolute verity in suits by the government against citizens of the United States. Yet, with full evidence on its records of the existence and justice of said credit, it was entirely suppressed in said statement.

The existence and suppression of this credit were accidentally discovered by one of claimant's counsel on the trial in the circuit court, but too late to be made available as a legal *set-off* in said case, for want of the action upon, and disallowance of the same, by the accounting officers, as required, for that purpose, by the 4th section of the act of March 3, 1797. 1 Stats. at Large, p. 515.

This item of credit, therefore, was not, and could not legally be, involved in said suit, but was withdrawn from the jury and from the case by the direction of Mr. Chief Justice Taney, as appears from a duly certified copy of his charge on file in this case.

After the termination of the said suit, and full satisfaction of the judgment rendered therein, the said item of credit still remaining due and unpaid to the claimant, he demanded the payment of the same at the Treasury, but it was refused upon the false and unjust pretext, *that it was barred by the suit aforesaid*, in which it was well known it had not been involved.

The suppression of the credit in this case, resulting from the discovery by the accounting officers of an error in his accounts *against himself*, is, we are informed and believe, *in accordance with the practice which prevails in all or nearly all the accounting offices of the government*. All the accounts of disbursing and other officers, as well as of individuals with the government, are required, by law, to be re-examined and settled by the proper officers of the Treasury. When an officer or individual, in his accounts rendered to the government, makes a mistake in his *own favor*, he is promptly notified of the fact, and compelled to rectify it, under the penalty of a suit in the federal courts. When the error is *against* the officer or individual, no notice of such error is given, but he is left to find it out as he may, or to submit to the loss in ignorance of its existence, upon the poetical fiction, that—

> "He that is robbed, o o o o
> Let him not know it, and he's not robbed at all."

This is a practice, it is respectfully submitted, "more honored in the breach than in the observance."

CHARLES E. SHERMAN,
JOHN ELY,
Attorneys for Claimant.

JOSEPH WHITE vs. THE UNITED STATES.

Chief Justice Gilchrist delivered the opinion of the court.

This claim is referred to us by the House of Representatives.

The case is stated as follows:

From April, 1845, to June, 1849, the claimant was navy agent for the port of Baltimore, and acting purser for the naval school at Annapolis, in both of which offices he received and disbursed the public

money, which he received from the treasury as navy agent, and rendered separate accounts for the money received by him in each of the offices. He charged himself, as acting purser, with the sum of $561 10, as received from himself as navy agent, but did not give himself a corresponding credit in his account as navy agent. He had quarterly accounts with the departments from that time until June, 1849, but was not informed of, and was not aware of, the error. In his accounts up to June, 1849, certain sums having been disallowed him, the Treasury Department caused a suit to be instituted against him, and upon the trial more than $5,000, which had been disallowed, was allowed him under the instructions of the court. On the trial he was first made aware of the mistake in the sum of $561 10, which he was not allowed as a set-off, because he had omitted to claim it at the Treasury Department, and at the suggestion of the court he withdrew this item, and it was not passed upon as being involved in the case.

Prior to the 22d of November, 1854, he applied to the Treasury Department for the payment of this sum, but was informed by the Fourth Auditor, Mr. Dayton, that the accounting officers were of opinion that, as a suit was brought against him in which all his accounts were judicially investigated, it would not be proper for them to reopen the accounts for the purpose of admitting a claim which was alleged to have been inadvertently omitted to be presented before the court and jury upon the trial.

He asks payment of this sum, with interest thereon from the 9th of January, 1852.

The case is submitted upon the evidence transmitted to us by the House of Representatives.

In Mr. Dayton's letter of February 15, 1855, he states as follows: "Upon the settlement, however, at this office of his account as acting purser, the credit which he had omitted to claim was allowed him as navy agent, and was entered on the reconciling statement as one of the differences between his account as stated by himself, and the same account as stated at this office. This item having remained on the reconcilement for three years, without being claimed by Mr. White, was omitted on the last settlement of his account, which took place after he had ceased to be in office. A suit having been instituted against him for the balance which was found to be due from him, he still neglected to present a claim to this sum of $561 10, and judgment was given against him without any reference to it. In the month of November last, the claim was made for the first time at this office, and Mr. White was informed that, as a suit had been instituted by the United States against him, in which all his accounts, both as navy agent and acting purser, had been judicially investigated and decided upon, it would not be proper, in the opinion of the accounting officers, to reopen those accounts for the purpose of admitting a claim which was alleged to have been inadvertently omitted to be presented before the court and jury upon the trial." The reason given by the letter for declining to allow this sum, appears to be that the account could not be reopened "for the purpose of admitting a claim alleged to have been inadvertently omitted to be presented before the court

and jury upon the trial." But it does not appear to have been inadvertently omitted to be presented. It was discovered upon the trial by the claimant's counsel, although it was known to the department at the time it occurred, but the claimant was not informed of it. It was not pressed by his counsel, but at the instance of the court was reserved for future examination by the accounting officers. Such is the statement of W. P. Whyte, esq., one of the counsel. It is stated in the opinion of the circuit court in Maryland: "It is unnecessary to notice the remaining item of the defence, as it has been properly withdrawn by the defendant. And as the alleged error in omitting to credit himself in his navy agent's account with the sum of $561 10, which he transferred to his debit in his purser's account, does not appear on the face of the account, and as this credit was not presented and rejected, it is not open to investigation here. If the error exists, it may be discovered by an examination of the accounts at Washington, and without doubt would be readily corrected by the accounting officers." It thus appears that the claim was presented, and was withdrawn for the reasons stated. The refusal to allow the sum was probably owing to the fact that the accounting officers were not precisely informed of what took place on the trial. There is nothing in the case to show why the item was dropped from the reconcilement, and why it was not admitted by the United States on the trial. If it was properly placed upon the reconcilement, it should have been allowed him without hesitation when his accounts were subjected to a judicial investigation.

The evidence establishes the facts that the claimant should have been credited with the sum of $561 10, and that this item was not passed upon at the trial. The ordinary principles of law and morality which are applied to regulate the dealings of individuals, are applicable in transactions between the United States and their citizens. Between private persons such a state of facts would induce a jury at once to return a verdict for the plaintiff. We are of opinion that the claimant is entitled to recover this sum of $561 10. But he is not entitled to interest by law, although he has the strongest equitable claim to it from the 9th day of January, 1852. He has proved that the United States owed him that sum, but, according to our decision in the case of Todd *vs.* The United States, interest is not a legal incident to a debt due from the United States, where it is merely proved that a debt is due. We shall adhere to that decision, until there is some action by Congress which would authorize or require us to depart from it.

We report a bill to carry the decision in this case into effect.

TREASURY DEPARTMENT,
April 24, 1856.

Pursuant to the act of Congress of 22d February, 1849, I hereby certify that the annexed are true copies of papers from the records and files of the office of the Fourth Auditor of this department, numbered 1, 2, 3, and 4.

In witness whereof, I have hereunto set my hand, and caused the [L. S.] seal of the Treasury Department to be affixed, on the day and year first above written.

JAMES GUTHRIE,
Secretary of the Treasury.

No. 1.

TREASURY DEPARTMENT,
Fourth Auditor's Office, November 22, 1854.

SIR: The accounting officers of the treasury having had under consideration your application, as the attorney of Joseph White, late navy agent and acting purser, for the sum of $561 10, which he states that he erroneously omitted to charge in his accounts current against the government, they are of opinion that, as a suit was instituted by the United States against him, in which all his accounts, both as navy agent and acting purser, were judicially investigated and decided upon, it would not be proper for them to reopen those accounts for the purpose of admitting a claim which is alleged to have been inadvertently omitted to be presented before the court and jury on the trial.

The papers received from you are herewith returned.

I am, sir, very respectfully, your obedient servant,

A. O. DAYTON.

PETER STELLE, Esq., *New York.*

I certify that the foregoing is a correct transcript from the records of this office.

A. O. DAYTON, *Fourth Auditor.*

TREASURY DEPARTMENT,
Fourth Auditor's Office, April 18, 1856.

No. 2.

TREASURY DEPARTMENT,
Second Comptroller's Office, February 15, 1855.

SIR: I transmit herewith a letter from the Fourth Auditor, explaining the claim of Joseph White, late navy agent, to be reimbursed the sum of $561 10, omitted by him in his account.

The statement of the Auditor is based on an examination of the official vouchers filed in his office, and accords entirely with my own recollection of the facts. When application was made, in November last, by the attorney of Mr. White, for payment of this omitted charge, I refused to entertain the question, upon the grounds that no accounting officer has any right to correct an alleged error in the judgment of a court of the United States.

A party injured by the judgment must seek redress from Congress.

I am, &c.,

J. M. BRODHEAD, *Comptroller.*

Hon. WILLIAM S. ASHE,
House of Representatives.

I certify that the foregoing copy of a letter to Hon. Wm. S. Ashe is truly and correctly made from the records of this office. Witness my hand and official seal, this eighteenth day of April, A. D. 1856.

[L. S.]

J. M. BRODHEAD,
Second Comptroller U. S. Treasury.

No. 3.

TREASURY DEPARTMENT,
Fourth Auditor's Office, February, 15, 1855.

SIR: In answer to your inquiries respecting the sum of $561 10, which was claimed a few months since by Joseph White, esq., late navy agent, but not allowed, and for the allowance of which he has now applied to Congress, I have the honor to state, that in the year 1845 Mr. White, being both navy agent and acting purser for the Baltimore station, charged himself in the latter capacity with the sum in question as received from himself as navy agent, but did not give himself a corresponding credit in his account as agent. Upon the settlement, however, at this office, of his account as acting purser, the credit which he had omitted to claim was allowed him as navy agent, and was entered on the reconciling statement as one of the differences between his account as stated by himself, and the same account as stated at this office. This item having remained on the reconcilement for three years, without being claimed by Mr. White, was omitted on the last settlement of his account, which took place after he had ceased to be in office. A suit having been instituted against him for the balance which was found to be due from him, he still neglected to present a claim to this sum of $561 10, and judgment was given against him without any reference to it. In the month of November last the claim was made for the first time at this office, and Mr. White was informed that, as a suit had been instituted by the United States against him, in which all his accounts, both as navy agent and acting purser, had been judicially investigated and decided upon, it would not be proper, in the opinion of the accounting officers, to reopen those accounts for the purpose of admitting a claim which was alleged to have been inadvertently omitted to be presented before the court and jury on the trial.

I am, sir, very respectfully, your obedient servant,

A. O. DAYTON.

J. M. BRODHEAD, Esq.,
Second Comptroller of the Treasury.

I certify that the foregoing is a correct transcript from the records of this office.

A. O. DAYTON, *Fourth Auditor.*

TREASURY DEPARTMENT,
Fourth Auditor's Office, April 18, 1856.

No. 4.—*Reconcilement of the account of Joseph White, late navy agent at Baltimore, for expenditures and receipts to the 7th of June,* 1849.

TREASURY DEPARTMENT,
DR. *Fourth Auditor's Office, February* 4, 1850.

To balance due the United States, per office statement.....	$9,012	25
To balance due the United States, per agent's summary...	1,742	59
Difference.....	7,269	66

Thus accounted for:

To this sum suspended under "contingent," being for an overpayment on account of travel in fourth quarter of 1846.....	$56	60
To this sum suspended, being commissions on same.....		57
To this sum suspended under "contingent," being for overpayments on account of travel in first quarter of 1847.....	16	80
To this sum disallowed at voucher 61, under "surgeons' necessaries, &c.," being for nursing and board of midshipman J. D. Rainey—officers not entitled to sick expenses under the act of March 3, 1835.....	30	00
To this sum disallowed by Second Comptroller in voucher 146, first quarter 1848, being for agent's office allowances for fuel and stationery for the year commencing April, 1847, an overcharge of.....	32	23
To this sum disallowed, paid Joseph White, as acting purser for 3 years 6 months and 19 days, at $1,500 per annum.....	5,328	08
To this sum "disallowed," paid Joseph White, as navy pension agent, being amount overpaid by him, as per pension account rendered 30th June, 1849.....	466	03
To this sum "disallowed," paid to Joseph White, navy pension agent, for commissions on amount of $40,549 98, disbursed to pensioners.....	1,013	75
To this sum "disallowed," claimed by agent for commissions on bills not belonging to station.....	1,149	84
To this sum "disallowed," claimed by agent for porter hire for office for 4 years and 46 days, at $180 per annum.....	742	50
To this sum disallowed for clerk hire for the present quarter, $59 17; and for rent of office, $10 66.....	69	83
To this sum disallowed for commissions on amount of $10,602 50, transferred to his successor, of 1 per cent.....	106	02
	9,012	25

Brought forward.....	$9,012 25
Less this sum credited to agent for "cash" transferred, not yet charged by him in his account current, receipt filed with account since.....	1,742 59
	7,269 66

A. O. DAYTON.

SECOND COMPTROLLER'S OFFICE, *February* 12, 1850.

The late navy agent having overcharged in this account for commissions, and the Fourth Auditor having allowed him in his statement the sum of $283 39 for the same, which is less than 1 per cent. on the amount disbursed by him, after the expiration of his official year, by $289 93, therefore this sum ($289 93) is allowed by this office, in addition to the first named sum, making the whole sum allowed him for commissions in this settlement of $573 82, and the balance due from him to the United States..... $8,722 32

A. K. PARRIS, *Comptroller.*

I certify that the within is a correct transcript from the records of this office.

A. O. DAYTON, *Fourth Auditor.*

TREASURY DEPARTMENT,
Fourth Auditor's Office, April 18, 1856.

To the honorable the House of Representatives of the United States of America.

The memorial of Joseph White, of the city of New York, respectfully shows:

That he was navy agent for the port of Baltimore, Maryland, from April, 1845, to June, 1849; that during that time he acted as purser for the naval school at Annapolis, Maryland, by the appointment of the honorable Secretary of the Navy.

Your memorialist further shows that, in his accounts with the Treasury Department of the United States, for the quarter ending the 31st December, 1845, he erroneously omitted to credit himself with the sum of five hundred and sixty-one dollars and ten cents, ($561 10.)

Your memorialist, as he has stated above, fulfilled the office of acting purser of the naval school at Annapolis, Maryland, as well as that of navy agent, and was held accountable at the Treasury Department under two separate heads of account. All funds required by your memorialist as acting purser for the naval school were drawn

for and transmitted by the department to him as *navy agent*, and then transferred to the *acting purser* of the *naval school*, your memorialist crediting himself with them in his account as *navy agent*, and debiting himself with the same in his account as *acting purser of the naval school*.

Your memorialist further shows, that the error in question, and for which he prays the relief of your honorable body, arose from the mode of accounting to the Treasury Department above detailed. In his account as acting purser for the naval school for the quarter ending 31st December, 1845, your memorialist charged himself with said sum of $561 10, "received from *navy agent*," but neglected to claim the proper credit in his account as *navy agent*, thus rendering himself chargeable at the Treasury Department, *on the face of his account*, with the aforesaid sum of $561 10, when in fact it was a simple transfer from the *navy agent* to the *acting purser* for the *naval school* of funds in his possession, and for which he had accounted to the treasury.

And your memorialist respectfully submits the (duplicate) accounts and vouchers endorsed A, B, C, D, and E, in proof of the above statement.

Your memorialist further shows, that upon his removal from the office of navy agent, in June, 1849, a suit was instituted against him by the Treasury Department in the circuit court of the United States for the district of Maryland, to obtain a settlement of his accounts, your memorialist having claimed certain credits which the Treasury Department refused to allow; that the cause was brought to trial at the April term of 1851 of said court.

Your memorialist further shows to your honorable body that he did not discover the aforesaid error until, at the trial aforesaid, it was brought to his knowledge by one of the witnesses in the cause on the part of the United States, in evidence of which your memorialist respectfully submits the certificate of one of his counsel in the cause, endorsed F; that it was then brought to the notice of the court, but was finally withdrawn by the counsel of your memorialist, because of technical objections to its introduction into the cause.

Your memorialist further submits, that he had no doubt at the time that this error would be corrected by the accounting officers of the treasury upon a representation of the facts, in which opinion he was sustained by the honorable judge who delivered the opinion of the court, the distinguished chief justice of the United States.

And your memorialist respectfully submits to your honorable body an authenticated copy of his opinion, endorsed G.

And your memorialist further shows, that he has made several applications to the accounting officers of the treasury for an adjustment of his claim, but that they have not thought it proper to grant him relief in the premises.

Your memorialist will not tax the time of your honorable body with further remarks; but, confidently relying upon your justice, prays that such relief may be granted by your honorable body as his case requires.

And your memorialist will ever pray, &c., &c.

JOSEPH WHITE.

New York, *December* 9, 1854.

TREASURY DEPARTMENT,
Second Comptroller's Office, February 15, 1855.

SIR: I transmit herewith a letter from the Fourth Auditor, explaining the claim of Joseph White, late navy agent, to be reimbursed the sum of $561 10, omitted by him in his accounts.

The statement of the Auditor is based on an examination of the official vouchers filed in his office, and accords entirely with my own recollection of the facts. When application was made, in November last, by the attorney of Mr. White, for payment of this omitted charge, I refused to entertain the question, upon the ground that no accounting officer has any right to correct an alleged error in the judgment of a court of the United States; a party injured by the judgment must seek redress from Congress.

I am, very respectfully, yours,
J. M. BRODHEAD, *Comptroller.*

Hon. WILLIAM S. ASHE,
House of Representatives, Washington.

TREASURY DEPARTMENT,
Fourth Auditor's Office, January 30, 1855.

SIR: I have the honor to acknowledge the receipt of your letter of the 26th instant, and to enclose a copy, which I have obtained from the Navy Department, of instructions given to Samuel McClelland and Joseph White, late navy agents at Baltimore, which I presume will furnish the information you are desirous of procuring.

I am told that there are no other documents authorizing them to act as pursers.

I have the honor to be, sir, very respectfully, your obedient servant,
A. O. DAYTON.

Hon. HENRY MAY,
House of Representatives.

TREASURY DEPARTMENT,
Fourth Auditor's Office, February 15, 1855.

SIR: In answer to your inquiries respecting the sum of $561 10, which was claimed a few months since by Joseph White, esq., late navy agent, but not allowed, and for the allowance of which he has now applied to Congress, I have the honor to state, that in the year 1845, Mr. White, being both navy agent and acting purser for the Baltimore station, charged himself in the latter capacity with the sum in question, as received from himself as navy agent, but did not give himself a corresponding credit in his account as agent. Upon the settlement, however, at this office, of his account as purser, the credit which he had omitted to claim was allowed him as navy agent, and was entered on the reconciling statement as one of the differences be-

tween his account as stated by himself, and the same account as stated at this office. This item having remained on the reconcilement for three years, without being claimed by Mr. White, was omitted on the last settlement of his account, which took place after he had ceased to be in office. A suit having been instituted against him for the balance which was found to be due from him, he still neglected to present a claim for this sum of $561 10, and judgment was given against him without any reference to it. In the month of November last the claim was made for the first time at this office, and Mr. White was informed that, as a suit had been instituted by the United States against him, in which all his accounts, both as navy agent and acting purser, had been judicially investigated and decided upon, it would not be proper, in the opinion of the accounting officers, to reopen those accounts for the purpose of admitting a claim which was alleged to have been inadvertently omitted to be presented before the court and jury on the trial.

I am, sir, very respectfully, your obedient servant,

A. O. DAYTON.

J. M. BRODHEAD, Esq.,
Second Comptroller of the Treasury.

A.

Statement of the names of the mechanics and laborers employed at the naval school, Annapolis, showing the number of days that each man was employed, their pay per diem, and the amounts respectively due to December 31, 1845, inclusive.

Names.	Rate.	To what date.	No. of days employed.	Pay per diem.	Amount due.	Received of J. White, acting purser.	Witness to signature.
Daniel Caulk	Carpenter	Dec. 31	26	$2 00	$52 00	Daniel Caulk	John Rainbow.
John Bright	do	do	1	1 38	1 38	John + Bright	James R. Howison.
Lewis Gooty	do	do	1	1 38	1 38	Lewis + Gooty	do.
Joseph Parkenson, jr	do	do	13½	1 00	13 50	Joseph + Parkenson, jr	John Rainbow.
John Hammond	do	do	26	1 37½	35 75	John T. Hammond	do.
Barney Mills	do	do	22½	1 37½	30 93	Barney + Mills	do.
Daniel Spragle	Mason	do	11	2 00	22 00	Daniel + Spragle	James R. Howison.
Spade Wilson	do	do	2	1 75	3 50	Spade + Wilson	John Rainbow.
Joseph Hutton	Painter	do	7	1 75	12 25	Joseph + Hutton	do.
Richard Thompson	do	do	5½	1 75	9 62	Richard + Thompson	James R. Howison.
John'n Hutton	do	do	26	1 75	45 50	John'n + Hutton	John Rainbow.
William Stewart	Carpenter	do	17	1 37½	23 37	William + Stewart	James R. Howison.
Richard Parkenson	Watchman	do	31	1 00	31 00	Richard + Parkenson	John Rainbow.
William Parkenson	do	do	31	1 00	31 00	William + Parkenson	do.
Joseph Parkenson	do	do	31	1 00	31 00	Joseph + Parkenson	do.
John Slaymaker	do	do	31	1 00	31 00	John + Slaymaker	James R. Howison.
Charles Carrol	Whitewasher	do	3	1 00	3 00	Charles + Carrol	do.
Joseph Wason	Mason's ass't	do	3	1 00	3 00	Joseph + Wason	do.
James Campbell	Mason's boy	do	7	75	5 25	James + Campbell	do.
Benjamin Offer	Laborer	do	31		10 00	Benjamin + Offer	John Rainbow.
Noble Watkins	do	do	31		10 00	Noble + Watkins	do.
John Adams	do	do	31		10 00	John + Adams	do.
Lewis Maynard	do	do	31		15 00	Lewis + Maynard	do.
Henry Kennon	do	do	31		15 00	Henry + Kennon	James R. Howison.
Moses Johnson	do	do	31		10 00	Moses + Johnson	John Rainbow.
John Maynard	do	do	31		10 00	John + Maynard	do.
Washington Ward	do	do	31		15 00	Washington + Ward	do.

Thomas Harris	ditto	ditto	31		10 00	Thomas + Harris	ditto.
George Brown	ditto	ditto	29	50	14 50	George + Brown	ditto.
David Irwin	ditto	ditto	31		18 00	David + Irwin	ditto.
James Hollyday	ditto	ditto	31		18 00	James + Hollyday	James R. Howison.
James Johnson	Whitewasher	ditto	1		75	James + Johnson	ditto.
John Smith	Use of carriage and horse	ditto	1½	1 75	2 62	John + Smith	ditto.
William Parkenson, jr.	Carpenter	ditto	11½	1 37½	15 80	William + Parkenson	John Rainbow.
					561 10		

Approved for five hundred and sixty-one dollars and ten cents.

FRANK'N BUCHANAN, *Commander and Superintendent.*

Rep. C. C. 20—2

JOSEPH WHITE.

B.

Abstract of expenditures by Joseph White, navy agent, Baltimore, Maryland, charged to account of the Navy Department, for the quarter ending December 31, 1845.

No.	Names of persons.	Articles purchased or required.	Name of vessel or station.	Amount paid.	Total.
		Pay of the navy.			
1	Joseph White, acting purser	Requisition	Station	$7,000 00	
2	Do do	do	do	7,000 00	
3	Do do	do	do	7,000 00	
					$21,000 00
4	Do do	do	Naval school		3,000 00
5	John Y. Young, commander	do	Rendezvous	1,000 00	
6	Do do	do	do	1,000 00	
7	Do do	do	do	1,000 00	
					3,000 00
8	George M. Bache, lieut. comd'g	do	U. S. schooner Nautilus	500 00	
9	Do do	do	do do	500 00	
10	Do do	do	do do	200 00	
					1,200 00
11	William F. Lynch, lieutenant	Sea pay, July 1 to September 29	Order from department	448 17	
12	Andrew K. Long, commander	Leave pay, 3d quarter 1845	do do	453 10	
13	Daniel S. Green, surgeon	do April 27 to September 30	do do	429 10	
14	George A. Stevens, midshipman	do July 18 to September 5	do do	40 76	
15	Reuben Harris do	do June 4 to September 30	do do	97 03	
16	Earl English do	do July 18 to November 5	do do	90 50	
17	Charles W. Aby do	do March 29 to September 30	do do	151 66	
18	Frederick B. Braud do	do for 3d quarter 1845	do do	75 02	
19	Henrietta Dillehunt, adm'x	Balance due A. Dillehunt, deceased	do do	78 14	
20	Charles F. Collins, formerly mid.	Leave pay for September, 1845	do do	24 45	
21	John Watson, orderly sergeant	Overcharge on account of pay	do do	30 00	
22	James W. Drury, seaman	do on allotment	do do	168 00	
23	George Jones, chaplain	Balance due John Hood, ord. sergeant, dec'd	do do	170 57	

24	Alexander Bowser, orderly sergeant	Overcharge on allotment	do	do	95 00	
25	Robert Brooks, seaman	do on account of pay	do	do	36 00	
26	John Smith, seaman	do do	do	do	16 00	
27	William Henry, seaman	do do	do	do	16 00	
28	E. P. King, adm'r	Balance due W. Jardino, seaman, deceased	do	do	191 04	
29	John Potter & Co	Sundries	U. S. ship Ontario		70 06	
						2,680 60
30	W. Greenwood, jr., 2 allotments	John Greenwood, seaman	G. F. Cutter	purser	12 00	
31	Richard McDonnell 2 do	James McDonnell, carpenter	do	do	80 00	
						92 00
32	William A. Tucker 1 do	J. Hamilton, assistant surgeon	A. D. Crosby	do		40 00
33	R. S. Harlan 2 do	David Harlan, passed assistant surgeon	Wm. Grant	do		120 00
34	Wm. Williams 3 do	L. J. Williams, assistant surgeon	J. N. Hambleton	do		120 00
35	D. Geisinger 1 do	G. F. Geisinger, clerk	Th. P. McBlair	do		20 00
36	Susan Ann Wiley 1 do	John K. Wiley, orderly sergeant	D. M. F. Thornton	do		5 00
37	Regina Bentley 2 do	Wm. Bentley, fireman	L. Warrington, jr.	do	20 00	
38	Matilda Griffin 2 do	Levi Griffin, 1st assistant engineer	do	do	70 00	
39	David Martin 2 do	James Wiley, midshipman	do	do	30 00	
						120 00
40	Ann Thomas 2 do	George Thomas, sailmaker	A. W. Upshur	do	40 00	
41	Adeline Smith 2 do	James Smith, captain top	A. J. Watson	do	12 00	
						52 00
		Provisions.				
	Wm. F. Lynch, lieut., (No. 11)	Rations	Order from department		18 20	
	John Potter & Co., (No. 29)	Scale for weighing provisions	U. S. ship Ontario		5 00	
42	Peter Kernan contractor	Retained 10 per cent	Boston, Massachusetts		1,432 92	
43	George W. Poppler do	Fresh provisions	U. S. ship Ontario		192 60	
44	Do do	do do	U. S. schooner Nautilus		23 18	
45	G. K. Tyler do	Bread	New York		1,468 50	
46	Do do	do	do		1,490 96	
47	Do do	do	Norfolk		565 57	
48	Do do	do	do		558 88	
49	Do do	do	do		723 15	
50	Do do	do	do		446 12	
51	Do do	do	do		857 25	
52	Do do	do	do		514 80	
53	Do do	do	do		173 55	
54	Do do	do	do		681 66	

B—Continued.

No.	Names of persons.	Articles purchased or required.	Name of vessel or station.	Amount paid.	Total.
55	C. F. & R. M. Cloud	Advertising	Ord. Bureau Prov's, &c.	$54 50	
56	George Taylor	Fresh provisions	U. S. schooner Nautilus	42 09	
57	Samuel Slines	Water	U. S. ship Ontario	52 08	
58	Hillert & Bennett	Beans	do	4 38	
59	Glass & White	Water	Steamer Engineer	75	
					$9,306 14
		Increase, repairs, &c.			
	Hillert & Bennett, (58)	Sundries	U. S. ship Ontario	5 63	
	Glass & White, (59)	Repairs	Steamer Engineer	1 50	
60	Croxall & Browning	Rope for boat falls	U. S. ship Ontario	25 08	
61	Do	Match rope	Navy yard, Pensacola	101 00	
62	C. G. Conradt	Thrumbs	do do	15 00	
63	Robert Hill & Co	Flannel	do do	285 00	
64	G. & N. Popplein	Alcohol	do do	7 50	
65	Jos. Robinson	Cartridge paper, quills, &c.	do do	34 00	
66	John Henderson & Co	Bunting	U. S. ship Ontario	20 00	
					494 71
		Surgeons' necessaries and appliances.			
67	John M. Sangue	Medicines	U. S. ship Ontario	42 82	
68	Jos. Coskery	Fresh bread, milk, &c.	do	4 74	
69	Matilda Emerson	Washing	do	1 75	
70	George E. Franklin	Sundries	Naval school	117 61	
					166 92
		Fuel, &c., for steam vessels.			
	Glass & White, (59)	16 cords pine wood	Steamer Engineer		46 00
		Improvement of navy yards.			
71	Edwin Wilmer	Building and flag stone	Navy yard, Norfolk		6,263 24

		Clothing for the navy.			
72	John W. Gale	Blankets, &c.	U. S. ship Ontario		11 00
		Contingent expenses.			
	John Potter & Co., (29)	Horn for lanterns	U. S. ship Ontario	4 75	
	Hillert & Bennett, (58)	Brooms	do	2 77	
73	George E. Weaver	Attendance at court of inquiry, &c	Order from department	6 00	
74	S. Hays, police officer	Apprehending deserters		20 00	
75	Charles G. Ridgely, commandant	Postage on public letters	Station	2 30	
76	Terence Marion	Drayage		3 38	
77	Balt. and Philadelphia Steamboat Co.	Freight	Naval school	2 77	
78	Balt. and Ohio Railroad Company	Transp'n and charges on sundries for Pittsburg		14 67	
79	C. F. & R. Milloud	Advertising	Ord. Bu. Yards and Docks	31 25	
80	John M. Gardner & Co	Transportation of recruits to Boston		243 54	
81	Wm. H. Fowler	3 months' rent of rooms for rendezvous		60 00	
82	Henry M. Gregory	Painting sign for rendezvous		5 00	
83	Hillert & Bennett	Wharfage	U. S. ship Ontario	25 00	
84	Henry S. Mitchell	do	do	50 00	
85	Charles West	Coal and scow hire	do	29 00	
86	P. Albinson	Furniture, (Lieut. Ward)	Naval school	155 21	
87	Ralph Bazil	Sweeping and repairing chimney	do	9 00	
88	Bell & Packie	Marble mantel, &c., (superintendent's house)	do	56 00	
89	Samuel Busby	Carpeting, &c., (surgeon's house)	do	382 75	
90	Henry G. Banning	Looking-glass, &c. do	do	68 00	
91	Daniel Caulk	Kitchen furniture, (Lieut. Ward)	do	30 25	
92	Cannon, Bennett & Co.	Furniture do	do	239 00	
93	Duer & Norris	Knobs, &c., (superintendent's house)	do	3 38	
94	E. A. Davis	Board of paper-hangers	do	6 00	
95	S. Eytinge	Sideboard, Lieut. Ward)	do	25 00	
96	Do	Tables do	do	44 00	
97	Thomas Fisher	Sand	do	7 70	
98	Do	do	do	40 15	
99	A. Golder	Paper and hanging, (superintendent's house)	do	64 41	
100	N. Hickman	Stationery	do	52 37	
101	Charles Hirsch	Cottage bedstead, (superintendent's house)	do	2 00	
102	John Henderson & Co	One American ensign	do	30 00	

B—Continued.

No.	Names of persons.	Articles purchased or required.	Name of vessel or station.	Amount paid.	Total.
103	J. L. Haddin & Co	Stoves, &c., (surgeon's house.)	Naval school	$111 48	
104	James Jones	Freight on sundries furnished	do	64 74	
105	William Legg	Iron work, &c	do	26 18	
106	James Lucas	Printing	do	7 50	
107	H. Levely	Carpeting, &c., (surgeon's house)	do	52 60	
108	McDowell & Gable	Carpeting, (Lieutenant Ward's house)	do	321 18	
109	Robert McLaughlin	Lamp posts and lamps	do	63 00	
110	H. McElderry	Coal	do	300 00	
111	John Noblet	Furniture, (surgeon's house)	do	345 17	
112	H. Pike & Ward	Hardware	do	112 75	
113	Alexander Russell, jr., & Co	Bricks	do	133 50	
114	John P. E. Stanley	Stoves, &c., (superintendent's house)	do	36 31	
115	C. J. Stewart	Bell hanging, &c	do	115 13	
116	John Stewart	Cart and harness	do	47 37	
117	John Scott	Iron safe	do	60 00	
118	Charles Suter	Mahogany chair, (superintendent's house)	do	18 00	
119	Edward Sands	Table, (Lieutenant Ward's house)	do	4 50	
120	Joseph Turner & Co	Lumber	do	259 06	
121	J. J. & F. Turner	Lime	do	11 20	
122	Abner Williams	Stoves and fixtures	do	125 80	
123	John Wilson	Freight from Norfolk	do	25 00	
124	Solomon Wroten	Transportation of furniture	do	26 50	
125	William H. Blast	Blinds, (superintendent's house)	do	18 50	
126	Joseph White, acting purser	Pay of mechanics and laborers	do	°776 49	
127	John Adams, midshipman	Travelling allowance		75 10	
128	Richmond Aulick..do	do		3 70	
129	Charles W. Aby...do	do		114 50	
130	Wm. D. Austin ...do	do		42 40	
131	F. Buchanan, commander	do		21 50	
132	Do .....do	do		22 20	

° Omitted to charge $561 10, as per accompanying voucher marked A.

133	Do	do	do		6 00
134	J. M. Bradford, midshipman		do		76 30
135	Fred. B. Brand	do	do		62 70
136	Homer C. Blake	do	do		21 70
137	J. W. Burnett	do	do		3 00
138	A. T. Byrens	do	do		21 70
139	John Contee, lieutenant		do		7 60
140	Wm. Chauvenet, prof. mathematics		do		12 80
141	F. S. Conover, midshipman		do		12 80
142	J. Q. A. Crawford	do	do		127 90
143	Ralph Chandler, acting midshipman		do		36 20
144	J. H. Carter, midshipman		do		21 70
145	Samuel P. Carter	do	do		25 40
146	Edward Donaldson, passed midship'n		do		7 60
147	Charles Deas	do	do		7 60
148	Charles Dyer, jr., midshipman		do		42 40
149	William DeKoven	do	do		25 40
150	E. D. Denny	do	do		25 40
151	Earl English	do	do		15 80
152	John M. Gardner, lieutenant		do		78 80
153	John J. Goodloo, acting midshipman		do		53 40
154	James R. Howison, clerk		do		6 00
155	Do	do	do		9 30
156	Washington Hammond, midshipman		do		25 40
157	Charles C. Hunter	do	do		21 70
158	Reuben Harris	do	do		39 90
159	John P. Hall	do	do		21 70
160	J. M. Hall		do	Order from department	4 00
161	Thomas Truxton Houston, jr		do		3 70
162	J. R. Hamilton, acting midshipman		do		102 90
163	George Jones, chaplain		do		21 70
164	John P. Jones, midshipman		do		25 40
165	James L. Johnston	do	do		25 40
166	W. N. Jeffers	do	do		21 70
167	Reigart B. Lowry	do	do		9 00
168	John A. Lockwood, surgeon		do		10 00
169	H. H. Lockwood, prof. mathematics		do		12 80
170	L. McDougall, midshipman		do		12 80
171	Samuel Marcy, passed midshipman		do		12 80

B—Continued.

No.	Names of persons.	Articles purchased or required.	Name of vessel or station.	Amount paid.	Total.
172	William H. Murdaugh, midshipman	Travelling allowance		$25 40	
173	Robert A. Marr do	do		21 70	
174	James B. McCauley do	do		12 80	
175	Robert Milligan do	do		10 00	
176	Charles M. Mitchell do	do		25 40	
177	A. McLaughlin do	do		25 40	
178	F. B. McKean, acting midshipman	do		12 80	
179	William Nelson, midshipman	do		51 90	
180	Jefferson H. Nones do	do		21 70	
181	Cyrus H. Oakley do	do		25 40	
182	David Ochiltree do	do		37 70	
183	William L. Powell do	do		25 40	
184	John J. Pringle do	do		58 11	
185	Henry O. Porter do	do		3 70	
186	W. W. Queen do	do		25 40	
187	S. B. Quackenbush do	do		36 80	
188	James S. Ridgley, passed midshipman	do		78 80	
189	Do do	do		51 00	
190	John Rainbow, carpenter	do		6 00	
191	Henry Rose, acting master's mate	do		78 80	
192	Edward Simpson, midshipman	do		21 70	
193	Robert Savage do	do		21 70	
194	Edward C. Stout do	do		37 50	
195	George A. Stevens do	do		42 40	
196	Edward E. Stone, acting midshipman	do		25 40	
197	Stephen D. Spence, midshipman	do		25 40	
198	James Somerville do	do		25 40	
199	Marshall J. Smith do	do		25 40	
200	Wm. H. Smith, acting midshipman	do		49 90	
201	William G. Temple, midshipman	do		25 40	
202	Peter Wasser do	do		12 80	
203	George P. Welsh do	do		12 80	

204	Clark H. Wells	do	do	12 80	
205	William H. Weaver	do	do	25 40	
206	Samuel Wilcox	do	do	3 90	
207	Nathaniel T. Wirt	do	do	25 40	
208	James H. Ward, lieutenant		do	3 70	
					$7,166 62
					54,904 23
209	George F. Miller, clerk	One quarter's salary		225 00	
210	Richard Cotter	One quarter's rent of office		37 50	
211	Joseph White, navy agent	Postage for quarter		20 76	
Agent's allowance per quarter for fuel and stationery				25 00	
Agent's commission on $30,127 74, at one per cent				301 28	
					609 54
Total expenditure					55,513 77
Expenditures as above					54,904 23
Deduct amount advanced to acting purser of naval station and naval school, under "*Pay*" and "*Contingent.*"					24,776 49
					30,127 74

B—Continued.

RECAPITULATION.

Expenditures under pay of the navy	$2,680 60	
J. White, acting purser, advanced him ....(for station)	21,000 00	
Do ....do ....do ....(for naval school)	3,000 00	
Jno. J. Young, commander ..do ....(rendezvous)	3,000 00	
Geo. M. Bache, lieut. comg ..do ....(Coast Survey)	1,200 00	
Geo. F. Cutter, purser, for allotments	92 00	
A. D. Crosby ....do ....do	40 00	
Wm. Grant ....do ....do	120 00	
J. N. Hambleton ..do ....do	120 00	
T. P. McBlair ....do ....do	20 00	
D. M. F. Thornton ..do ....do	5 00	
L. Warrington, jr ..do ....do	120 00	
A. W. Upshur ....do ....do	40 00	
A. J. Watson ....do ....do	12 00	
		$31,449 60
Expenditures under provisions		9,306 14
Expenditures under increase, repairs, &c		494 71
Expenditures under surgeons' necessaries and appliances		166 92
Expenditures under fuel, &c., for steam-vessels		46 00
Expenditures under improvements at navy yards		6,263 24
Expenditures under clothing for the navy		11 00
Expenditures under contingent expenses	7,166 62	
Office expenses, commissions, &c	609 54	
		7,776 16
		55,513 77

E E.

JOSEPH WHITE, *Navy Agent.*

BALTIMORE, *December* 31, 1845.

C.

The United States in account current with Joseph White, acting purser for United States naval school, Annapolis, Maryland.

1845.			1845.		
	Pay and subsistence.			*Pay and subsistence.*	
Dec. 31	To amount paid to officers and midshipmen, from 4th September to this date, inclusive, as per pay-roll	$8,234 50	November Dec. 4	By this amount receipted for by me, to F. B. Stockton, late purser at naval school	$2,752 55
	Balance to new account	518 05	Dec. 31	" received from J. White, navy agent	3,000 00
			Dec. 31	" do. do. do. do.	3,000 00
		8,752 55			8,752 55
			Dec. 31	By balance	$518 05

CONTINGENT EXPENSES.

1845.			1845.		
Sept. 30	To amount paid to mechanics and laborers, as per voucher No. 1	$540 55	November	By this amount, receipted for by me to F. B. Stockton, late purser at naval school	$1,439 72
Oct. 31	" Do. do. do. do. " 2	899 17	Dec. 11	" received from J. White, navy agent	776 49
Nov. 30	" Do. do. do. do. " 3	776 49	" 31	" do. do. do. do.	[o]561 10
Dec. 31	" Do. do. do. do. " 4	561 10			
		2,777 31			2,777 31

JOSEPH WHITE, *Acting Purser.*

[o] Debited himself as acting purser of the naval school with this amount, ($561 10,) and omitted to claim credit for the same in his account as navy agent. See abstract of expenditures marked B, and voucher marked A.

D.

Summary statement of receipts and expenditures on account of the Navy Department, by Joseph White, navy agent at Baltimore, Maryland, for the quarter ending 31st December, 1845.

Receipts.	Pay of the navy.	Provisions.	Increase, repair, &c.	Surgeons' necessaries and appliances.	Arrearages of medicines.	Coal and other fuel for steam vessels.	Improvement of navy yards.	Clothing for the navy.	Naval school, Annapolis.	Pay of marine corps.	Contingent expenses.	Total amount of receipts and expenditures.
Balances on hand from last statement	$2,975 82	$3,338 57	.....	$14 78	.....	.....	.....	.....	.....	.....	$967 31	$7,296 48
Rec'd in pursuance of requisition No. 5096	70 05	1,108 44	.....	.....	.....	$164 50	.....	$67 87	.....	.....	66 96	1,477 82
Do.....do.....do..... 5922	.....	1,124 45	.....	.....	.....	.....	.....	.....	.....	.....	.....	1,124 45
Do.....do.....do.....5944	11,200 00	.....	$444 75	.....	.....	.....	.....	.....	.....	.....	.....	11,644 75
Do.....do.....do.....5956	.....	3,500 00	.....	.....	.....	.....	.....	.....	.....	.....	.....	3,500 00
Do.....do.....do.....5971	1,500 00	.....	.....	.....	.....	.....	.....	.....	.....	$500 00	.....	2,000 00
Do .....do.....do..... .6006	8,500 00	.....	500 00	.....	.....	46 00	.....	.....	.....	.....	1,000 00	10,046 00
Do.....do.....do.....6009	3,000 00	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	3,000 00
Do.....do.....do..... —	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	6,276 49	6,276 49
Do.....do.....do.....6038	.....	.....	.....	.....	.....	.....	$6,963 24	.....	.....	.....	.....	6,963 24
Do.....do.....do.....6056	11,500 00	2,000 00	.....	250 00	.....	.....	.....	.....	.....	.....	1,700 00	15,450 00
Rec'd from S. McClellan, late navy agent..	2,028 74	131 14	155 71	42 39	$116 38	.....	.....	52 35	.....	97 90	1,218 12	3,842 03
Transferred, as below. See *Contingent*....	.....	.....	.....	.....	.....	.....	.....	.....	$1,915 85	.....	.....	1,915 85
	40,774 61	11,202 60	1,100 46	307 17	116 38	210 50	6,963 24	120 22	1,915 85	597 20	11,228 88	73,837 11
Paid but not charged in last settlement*....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	10 00	10 00
Overpaid from last statement.....	.....	.....	345 87	.....	.....	164 50	.....	30 06	1,915 85	186 48	.....	2,642 76
Expenditures, as per abstract B.....	31,449 60	9,306 14	494 71	166 92	.....	46 00	6,963 24	11 00	.....	.....	7,166 62	54,904 23
Office expenses, commissions, &c., do.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	609 54	609 54
Expenditures, as per abstract B.....	3,276 50	.....	.....	.....	.....	.....	.....	.....	.....	183 48	.....	3,459 98
Agents' commissions ... do.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	34 60	34 60
As per account disallowed in 3d quarter, (commissions).....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	270 00	270 00
This sum charged in former statement to naval school, now charged to contingent expenses	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	1,915 85	1,915 85
	6,048 51	1,896 46	259 88	140 25	116 38	.....	.....	79 16	.....	227 24	1,222 27	9,990 15
	40,774 61	11,202 60	1,100 46	307 17	116 38	210 50	6,963 24	120 22	1,915 85	597 20	11,228 88	73,837 11

* Voucher No. 135, last quarter.

BALTIMORE, *December* 31, 1845.

JOS. WHITE, *Navy Agent.*

E.—*Reconcilement of the account of Joseph White, navy agent at Baltimore, for his expenditures for the 4th quarter of* 1845, *and his receipts to January* 31, 1846.

To balance due United States, as per office statement...		$85,906 72
" do. do. do. do. agent's summary		9,990 15
Difference		75,916 57
Thus accounted for—		
To requisitions Nos. 6,091 and 6,112, charged to but not yet credited by agent.....		$18,000 00
" this sum, for commissions in 2d quarter of 1845.....		130 00
" this sum, suspended, being for money transferred to himself as acting purser, 3d quarter of 1845.....		27,000 00
" this sum, suspended, for commissions on same.....		270 00
" this sum, suspended for want of funds in the hands of agent to meet disbursements under the head of "contingent non-enumerated".....		1,932 22
" this sum, suspended, being for money transferred to himself as acting purser.....		24,000 00
" this sum, incorrectly charged in summary statement for commissions suspended in 3d quarter of 1845		270 00
" this sum, suspended for want of funds in the hands of agent to meet disbursements made by him on account of "naval school at Annapolis".....		4,277 18
" this sum, suspended under "contingent," being for overpayments on account of travel, vouchers 145, 149, 150, 156, 164, 165, 172, 176, 177, 181, 183, 186, 189, 196, 197, 198, 199, 200, 205, and 207.....		56 60
" this sum, suspended, being the commission on the above sum.....		57
" this sum, suspended under "contingent," for bill for fuel and stationery, receipt required.....		25 00
" this sum, suspended, being for an erroneous credit claimed by agent on account of a supposed short charge, voucher 135, 3d quarter of 1845.....		10 00
		75,971 57
Less these sums, being more credited in official statement than in agent's summary, viz:		
By H. Etting, purser, per report No. 7,474, credits this sum for allotment of Wm. Timms.....	$5 00	
" F. B. Stockton, purser, per report No. 7,494, credits this sum for allotment of E. L. Du Barry.....	50 00	
		55 00
Difference as stated.....		75,916 57

TREASURY DEPARTMENT,
Fourth Auditor's Office, March 12, 1846.

A. O. DAYTON.

BALTIMORE, *December* 6, 1854.

I hereby certify, that I was one of the counsel of Joseph White, late navy agent at Baltimore, in the suit against him in United States circuit court in 1851, brought by the United States; that during the trial I discovered an error in his account of $561 10, wherein he had failed to charge the government with that sum paid to him as acting purser, by himself as navy agent; and upon presenting the voucher for the disbursement to the clerk of the Navy Department, then on the stand as a witness, he acknowledged the error, and admitted his discovery of it at the time it occurred, and of his failure to notify Mr. White thereof. This error, however, did not appear on the face of the *government accounts*, and not having been presented to the department at Washington, as a claim, and disallowed according to the act of Congress, it could not be properly set up as a set-off. It was not, therefore, pressed by Mr. White's counsel, but, at the instance of the court, it was reserved for future examination by the accounting officers of the Navy Department, who, the court said, if I correctly remember the language of the judge, would "beyond doubt rectify the error, if it be properly pointed out." This is my recollection of the transaction, and Mr. Sullivan, one of the clerks in the Navy Department, who was present as a witness during the trial, will, I think, corroborate this statement.

WM. PINKNEY WHYTE.

IN THE HOUSE OF REPRESENTATIVES.—*February* 23, 1855.

A BILL for the relief of Joseph White.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the proper accounting officers of the treasury be, and they are hereby, directed to re-examine the accounts of Joseph White, late acting purser in the navy, and have the same settled on the principles of equity and justice.

34th CONGRESS, 1st Session. } HO. OF REPRESENTATIVES. { REPORT C. C. No. 21.

CASSIUS M. CLAY.

JUNE 28, 1856.—Committed to a Committee of the Whole House, and ordered to be printed.

The COURT OF CLAIMS submitted the following

REPORT.

CASSIUS M. CLAY *vs.* THE UNITED STATES.

To the honorable the Senate and House of Representatives of the United States in Congress assembled:

The Court of Claims respectfully presents the following documents as the report in the case of Cassius M. Clay *vs.* the United States:

1. The petition of the claimant.
2. Petition of the claimant to Congress, and accompanying documents, referred by the House of Representatives to the Court of Claims, and now returned to the House in a separate envelope.
3. Opinion of the court refusing an order to take testimony, delivered by Judge Blackford.

By order of the Court of Claims.

In testimony whereof, I have hereunto set my hand and affixed the [L. S.] seal of said court at Washington, this 25th day of June, A. D. 1856.

SAM'L H. HUNTINGTON,
Chief Clerk Court of Claims.

To the honorable the Court of Claims:

The petition of Cassius M. Clay, of the Commonwealth of Kentucky, respectfully showeth: That during the late war between the United States and Mexico, your petitioner was a captain in the service of the United States. That he was attached to the Kentucky regiment of cavalry under Col. Marshall, and, preparatory to departing for Mexico, was stationed at or near Louisville, Kentucky. That on the 3d day of July, 1846, the day before said regiment embarked for Memphis, a guard under the command of Lieut. Sartin was ordered to Louisville to apprehend and bring in deserters, a considerable number of whom were said to be in a house of ill-fame, belonging to or kept by one Eliza Bowles. Lieut. Sartin proceeded to the execution of the

which he commanded. On arriving at the house indicated, he was not only denied admission, but fired upon from the house. Two of his men were wounded, and a horse killed. He returned to camp, reported the circumstances, and, in addition to what has been above stated, added that some were supposed to be killed in the encounter.

About one or two o'clock in the morning, your petitioner was awakened in his tent by Col. Field, then in command, who ordered him to take a reinforcement, to enter the house and bring in the deserters.

Your petitioner, being a subordinate officer, felt himself imperatively bound to obey the orders of his superior in authority. Anticipating from what had previously occurred that resistance would be made, the house was quietly surrounded, and orders given that all the doors should be simultaneously broken open. This was what he deemed a prudent order, calculated as well to effect the object which was to be accomplished, as by the promptness of the movement to prevent the effusion of blood.

His orders were obeyed; but it appeared that the deserters of whom he was in quest had escaped through a back way. No man was found on the premises but one, by the name of Steed. The soldiers, who were exasperated at the conduct of the inmates of the house on the previous evening, were, with great personal difficulty on his part, prevented from taking summary vengeance upon Steed and Mrs. Bowles. He succeeded in protecting them from personal injury, and not only did his conduct receive the commendation and approval of the commanding officer under whose orders he had acted, but Mr. Steed expressed his personal thanks and gratitude for this protection which he had been able to afford him.

Your petitioner further shows, that after his return from Mexico, a suit was instituted against him for this alleged trespass by Mrs. Bowles, *alias* Lang, and a verdict rendered against him, upon which judgment was pronounced; which, in October, 1848, amounted, principal, interest, and costs, to the sum of $533 20, which he has paid.

It is presumed that it is unnecessary to remind this honorable court, that while the judicial department of this government has ever recognised the subordination of the military to the civil authority, and therefore held that an officer cannot justify, in an action of trespass, by producing the order of his superior in command, directing the act which has been performed, yet the government has ever acknowledged its obligation to indemnify and save harmless the individual who, in obedience to such order, has incurred personal responsibility. This principle, as equally applicable to subordinates both in the civil and military departments of the government, has so frequently been asserted, and, as your petitioner is advised, in no one instance repudiated, that he forbears, at this stage of the case, to cite any of the numerous cases in which relief has been afforded under similar circumstances, reserving the right, should the principle be questioned before this tribunal, (which he cannot anticipate,) to present to your honorable court numerous cases in which it has been settled as the uniform practice of the government, to give to the officer full indem-

order. He was dressed in his uniform, and accompanied by the guard nity for any losses he may have incurred by a faithful obedience to the orders which it was his duty to obey—not only by reimbursing him the full amount of any judgment that may have been recovered against him, with interest, but his own costs and counsel expenses.

To this extent, therefore, your petitioner asks the judgment of your honorable court, viz: "that he may be reimbursed the amount of the judgment so recovered against him, with the costs and counsel fees which he has expended in the defence of the suit brought against him up to the day of reimbursement, and for the expenses, costs, and fees incurred, and payable by him in the prosecution of this claim."

He asks further, in regard to the foregoing claim, to lay before your honors, from the official documents of Congress, a petition presented by him, with the accompanying papers, marked 30th Congress, 2d session, report No. 130; also report No. 150, 2d session 33d Congress, with a bill in favor of the claim.

Should the validity of such a claim be controverted before your honorable court, or the sufficiency of the evidence be questioned, your petitioner respectfully asks that he may be in due time apprized of what is deficient, that he may supply the defect.

Your petitioner presents in this case another item of claim. In November or December, 1846, he was ordered by Col. Marshall to disperse, by a forced march, a band of robbers who were threatening the train from Camargo to Monterey. Upon reaching the point where it was supposed that his services would be required, he was ordered to Monterey; from Monterey to Saltillo, by Gen. Marshall; from Saltillo to Palomas, by Gen. Butler; from Palomas to Encarnacion, by Major Gaines. At this last place he was taken prisoner. Under these circumstances, all the baggage and property which he had with him in Mexico was lost, including many valuable papers. The actual cost of the articles of property thus lost amounted to upwards of $1,370. This case was also presented to the House of Representatives, and on the 14th of March, 1848, the Committee of Claims made a report, 30th Congress, 1st session, No. 365, with a bill, H. R. No. 331. This report, while acknowledging to the fullest extent the obligation of the United States to make compensation for losses thus sustained by individuals employed in the service of the country, yet, by some estimates or process of reasoning not explained, proposed the very inadequate remuneration, for certain items of the claim, to the extent of $760, leaving the other items wholly unnoticed, and no reason assigned for the disallowance of them.

Your petitioner asks, at the hands of your honorable court, the full allowance of his entire claim, with interest from the time of the incurring of the losses which he sustained—say January 1st, 1847. He appends hereto the report of the Committee of Claims above referred to, to which is appended his memorial and the certificate of Major Gaines, then a member of the House; also report No. 150, above referred to, adverse to this claim.

Your petitioner alleges that jurisdiction has been given to this court by the act of Congress establishing the same, and he prays for

such relief as the justice of his claims, of which he is the sole owner, calls for.

R. S. COXE,
JNO. M. McCALLA,
Counsellors and Attorneys.

CASSIUS M. CLAY *vs.* THE UNITED STATES.

Opinion of the court, delivered by Blackford, J.:

The petition in this case contains two distinct demands. The first demand is as follows:

During the late war between the United States and Mexico, your petitioner was a captain in the service of the United States. He was attached to the Kentucky regiment of cavalry under Colonel Marshall, and, preparatory to departing for Mexico, was stationed at or near Louisville, Kentucky. On the 3d of July, 1846, the day before said regiment embarked for Memphis, a guard, under the command of Lieutenant Sartin, was ordered to Louisville to apprehend and bring in deserters, a considerable number of whom were said to be in a house of ill-fame, belonging to or kept by one Eliza Bowles. Lieutenant Sartin proceeded to the execution of the order. He was dressed in his uniform, and accompanied by the guard which he commanded. On arriving at the house indicated, he was not only denied admission, but fired upon from the house. Two of his men were wounded and a horse killed. He returned to camp, reported the circumstances, and, in addition to what has been above stated, added that some were supposed to be killed in the encounter.

About one or two o'clock in the morning, your petitioner was awakened in his tent by Colonel Field, then in command, who ordered him to take a reinforcement, to enter the house and bring in the deserters.

Your petitioner, being a subordinate officer, felt himself imperatively bound to obey the orders of his superior in authority. Anticipating, from what had previously occurred, that resistance would be made, the house was quietly surrounded, and orders given that all the doors should be simultaneously broken open. This was what he deemed a prudent order, calculated as well to effect the object which was to be accomplished, as by the promptness of the movement to prevent the effusion of blood. His orders were obeyed, but it appeared that the deserters, of whom he was in quest, had escaped through a back way. No man was found on the premises but one by the name of Steed. The soldiers, who were exasperated at the conduct of the inmates of the house on the previous evening, were, with great personal difficulty on his part, prevented from taking summary vengeance upon Steed and Mrs. Bowles. He succeeded in protecting them from personal injury, and not only did his conduct receive the commendation and approval of the commanding officer under whose orders he had acted, but Mr. Steed expressed his personal thanks and gratitude for this protection which he had been able to afford him.

Your petitioner further shows, that after his return from Mexico, a

suit was instituted against him, for this alleged trespass, by Mrs. Bowles, *alias* Lang, and a verdict rendered against him, upon which judgment was pronounced, which, in October, 1848, amounted, principal, interest, and costs, to the sum of five hundred and thirty-three dollars and twenty cents; which he has paid.

The prayer of this first part of the petition is, that the claimant may be reimbursed the amount recovered against him as aforesaid. There is no legal ground for that claim. The government does not undertake to indemnify the officers of the army as to damages which may be recovered against them in cases like the present.

Supposing the order, which is not very distinctly stated, to be that the claimant should *break open* the house of Mrs. Bowles for the purpose mentioned, it was no justification for the trespass, because the order was unlawful. An officer is justifiable in acting under the order of his superior officer, if that order is legal, (2 St. at Large, 361;) but not if the order be illegal. Mitchell *vs.* Harmony, 13 Howard, 137.

There is nothing in the petition to show that Colonel Field had any authority to order the house to be broken open. If it was necessary so to enter the house to search for deserters, the proper authority to do so should have been obtained from a civil magistrate. It appears from a document, made part of the petition, that in the suit in which the judgment was recovered, the claimant's plea of justification, under said order, was held to be insufficient, on the ground that the order was unlawful; and that decision is no doubt correct. We are therefore of opinion that the government is not legally bound to indemnify the claimant against the judgment. There are cases in which Congress has relieved military officers, acting under unlawful orders, from judgments rendered against them. Mitchell's case, 10 St. at Large, 727, cited by the claimant's counsel, is such a one. But the power to relieve in such cases belongs, we think, exclusively to Congress.

The other part of the petition is as follows:

In November or December, 1846, the claimant was ordered by Colonel Marshall to disperse, by a forced march, a band of robbers who were threatening the train from Camargo to Monterey. Upon reaching the point where it was supposed that his services would be required, he was ordered to Monterey; from Monterey to Saltillo, by General Marshall; from Saltillo to Palomas, by General Butler; from Palomas to Encarnacion, by Major Gaines. At this last place he was taken prisoner. Under these circumstances all the baggage and property which he had with him in Mexico were lost, including many valuable papers. The actual cost of the articles thus lost amounted to upwards of thirteen hundred and seventy dollars. The items are set out in a memorial to Congress, which is made part of this petition.

This last-mentioned claim, which is for the value of goods taken by the enemy in time of war, cannot be sustained. Vattel, in speaking of damages to real estate caused by the enemy, says: "All the subjects are exposed to such damages; and wo to him on whom they fall! The members of a society may well encounter such risk of property, since they encounter a similar risk of life itself. Were the State strictly to indemnify all those whose property is injured in this

manner, the public finances would soon be exhausted; and every individual in the State would be obliged to contribute his share in due proportion—a thing utterly impracticable." Vattel's Law of Nations, chapter 15, section 232. We think the reason of that rule is as applicable to the seizure of personal property as it is to damages to real estate. The present claim is not founded on any general law, and this court therefore furnishes no remedy for the loss.

There will not, therefore, be any order for testimony in this case.

To the honorable Congress of the United States of America:

Your petitioner, C. M. Clay, would respectfully represent that he was lately a captain in the United States service, and that on the 3d day of July, 1846, the day before the Kentucky regiment embarked for Memphis, he was stationed near Louisville; and that on the same day a guard under the command of Lieut. Sartin was ordered to Louisville to bring in all deserters, a large number of whom were said to be in a certain house of ill-fame belonging to one Eliza Bowles. Lieutenant Sartin, in uniform with his guard, was denied admission into the house, fired upon, and one man shot through the nose, one through the wrist, and one horse killed; he retreated to camp, and, in addition to the wounded, reported some (supposed) killed. At 1 or 2 o'clock on the next morning I was awakened in my tent, and ordered by Colonel Field, then in command, to take a reinforcement, to enter the house at all hazards, and by force of arms bring in the rebellious deserters, and for this purpose ammunition was issued, under his order, to the guard. This very disagreeable and onerous duty I felt myself, as a military subordinate, bound to obey. Supposing that the same resistance would be made, I quietly surrounded the said house, and ordered all the doors to be simultaneously broken, both the outer and inner doors, that no lives might be jeoparded; this was accordingly done, but no one was found and captured but a Mr. Steed, the soldiers being allowed by their companions to escape through a back way. It was with the utmost difficulty that I could save the lives of Mrs. Bowles and Mr. Steed, as the men, particularly those who had been shot, were very much exasperated. No one, however, was personally injured, and my conduct gave satisfaction to the officers in command, and Mr. Steed expressed himself grateful for my difficult protection of himself from the threatening pistols of the guard.

On my return from Mexico Mrs. E. Bowles, *alias* Lang, brought suit against me for the trespass, and recovered of me $533 20, which I have paid. For the truth of the above facts I refer your honorable body to documents Nos. 1, 2, and 3, hereto appended, and to your associate, the Hon. John P. Gaines.

In view of all which circumstances I ask your honorable body to refund me the said sum of money; because—

1st. I was acting under specific military orders, which I was bound, I then and now believe, to obey.

2d. I had no personal interest to subserve or private malice to

gratify, and because I did as little damage to persons or property as was possibly consistent with the safety of my soldiers.

3d. Because the damages were vindictive, and believed to be sought against me because of political opinions which are distasteful to the powerful in Kentucky.

In conclusion, I remark, as in a former petition to your honorable body, that I do not expect to be paid for my patriotism, but I do expect to be protected, in the discharge of my duty, from personal losses and unjust persecution.

As my former prayer was unanswered, I am hardly encouraged to ask redress, but yet venture "to pray" this once more.

Your obedient servant,

C. M. CLAY.

The Committee of Claims, to whom were referred the petition and papers of Cassius M. Clay, report:

That this claim is for relief against a judgment obtained against him by Eliza Lang, and for indemnity for losses of property in Mexico whilst the petitioner was in the military service of the United States.

The merits of the claim are set forth in House Report No. 365, 1st sess. 30th Cong., and in House Report No. 131, 2d sess. 30th Cong., both of which are annexed hereto and make part of this report.

A bill is herewith reported for the relief of the petitioner, and its passage recommended.

To the honorable the Congress of the United States of America:

Your petitioner would respectfully state, that in the last of November or first of December, 1846, he was ordered, by Colonel Marshall, to disperse, by a *forced* march, some robbers threatening the train from Camargo to Monterey; that upon arriving at the point of supposed attack, he was ordered to Monterey; from Monterey to Saltillo, by General Marshall; from Saltillo to Palomas, by General Butler; from Palomas to Encarnacion, by Major Gaines, where he was taken *prisoner*. In consequence of all which, no transportation having been allowed him, everything he possessed was lost. The camp was said to have been plundered at Camargo by the troops, of which your petitioner has no evidence; all he knows about it is, *his total loss* of the following articles, without fault or neglect of his:

1 gold watch, cost	$350 00
2 suits of clothes, new, $65 each	130 00
12 new shirts, $5 each	60 00
1 hunting rifle	35 00
Other suits of clothes, winter and summer, sash and epaulets, bedding, camp and clothes chests, kitchen and table furniture, &c., say	300 00
1 horse foundered by soldiers riding, and dead	150 00

1 horse taken by the Mexicans	$150 00
1 mule forced to sell at $40, worth $80 (cost)	40 00
2 duelling-pistols and 1 revolver, worth	120 00
	1,373 00

Your petitioner states the entire loss of his *papers*, which will be an injury to him, an amount nearly as great as the sum above stated, but for this he asks no remuneration. He does not expect to be paid for his patriotism; but, plundered as he has been of his property, first by the troops at Camargo and then robbed abroad by the Mexicans, he is somewhat embarrassed in his pecuniary affairs, and only asks of "Uncle Sam" to pay a part, at least, of his losses. The facts of the loss and so forth are incapable of *positive* proof; for their general accuracy, you are referred to the Hon. J. P. Gaines, one of your honorable body; and for their *entire* truth, your petitioner pledges his "sacred honor;" a voucher considered sufficient in the settlement of officers' accounts in ordinary transactions, and which, should it be made conclusive in this case, will very much oblige one who has received many hard knocks and no "glory."

Your petitioner "prays" this *once*.

C. M. CLAY,
Once Captain Kentucky Mounted Volunteers.

P. S.—Your petitioner had two violins broken to pieces by the overturning of the wagon in "Texas," but as he and U. S. have suffered alike in that unfortunate land, he asks for these last no remuneration.

C. M. C.

IN THE HOUSE OF REPRESENTATIVES—*February* 23, 1855.

The Committee of Claims, to whom was referred the memorial of Cassius M. Clay, report:

That the petitioner sets up two claims. The first is to receive pay for a judgment recovered against him for an alleged trespass in obedience to the commands of his superior officer. This claim (the particular facts of which appear from the papers accompanying this report) the committee recommend should be paid, for which purpose they have reported the bill now submitted to the House.

The second claim is for property lost by the petitioner in Mexico during the war there. The committee report adversely to this claim. The facts appear from the accompanying papers.

IN THE HOUSE OF REPRESENTATIVES—*February* 28, 1849.

The Committee of Claims, to whom was referred the petition of Cassius M. Clay, report:

That the petitioner is entitled to the relief prayed for, on the ground that the acts which subjected him to the prosecution and penalty were done and performed in obedience to the orders of his superior officer. It was not discretionary with the petitioner whether to obey or not; unconditional obedience to the lawful commands of his superior was his duty, and in the faithful performance of his duty in the public service an officer ought to be sustained and indemnified from loss.

The committee therefore report a bill for his relief, and recommend its passage.

No. 1.

To the honorable Congress of the United States of America:

Your petitioner, C. M. Clay, respectfully represents, that he was lately a captain in the United States service, and that on the 3d day of July, 1846, the day before the Kentucky regiment embarked for Memphis, he was stationed near Louisville; and that on the same day a guard, under the command of Lieutenant Sartin, was ordered to Louisville to bring in all deserters, a large number of whom were said to be in a certain house of ill-fame belonging to one Eliza Bowles. Lieutenant Sartin, in uniform, with his guard, was denied admission into the house, fired upon, and one man shot through the nose, one through the wrist, and one horse killed. He returned to camp, and, in addition to the wounded, reported some (supposed) killed. At one or two o'clock on the next morning, I was awakened in my tent and ordered by Colonel Field, then in command, to take a reinforcement, to enter the house at all hazards, and by force of arms bring in the rebellious deserters, and for this purpose ammunition was issued, under his order, to the guard. This very disagreeable and onerous duty I felt myself, as a military subordinate, bound to obey. Supposing that the same resistance would be made, I quietly surrounded the said house, and ordered all the doors to be simultaneously broken, both the outer and inner doors, that no lives might be jeoparded. This was accordingly done, but no one was found and captured but a Mr. Steed, the soldiers being allowed, by their companions, to escape through a back way. It was with the utmost difficulty that I could save the lives of Mrs. Bowles and Mr. Steed, as the men, particularly those who had been shot, were very much exasperated. No one, however, was personally injured. And my conduct gave satisfaction to the officers in command; and Mr. Steed expressed himself grateful for my difficult protection of himself from the threatening pistols of the guard.

On my return from Mexico, Mrs. E. Bowles, *alias* Lang, brought suit against me for the trespass, and recovered of me $533 20, which

I have paid. For the truth of the above facts, I refer your honorable body to documents Nos. 2, 3, and 4, here appended, and to your associate, the Hon. John P. Gaines.

In view of all which circumstances I ask your honorable body to refund me the said sum of money; because—

1st. I was acting under specific military orders, which I was bound, I then and *now* believe, to obey.

2d. I had no personal interest to subserve, or private malice to gratify; and because I did as little damage to persons or property as was possibly consistent with the safety of my soldiers.

3d. Because the damages were vindictive, and believed to be sought against *me* because of political opinions, which are distasteful to the powerful in Kentucky.

In conclusion I remark, as in a former petition to your honorable body, that I do not expect to be paid for my patriotism; but I do expect to be protected, in the discharge of my duty, from personal losses and unjust persecution.

As my former prayer was unanswered, I am hardly encouraged to ask redress, but yet venture to "pray" this once more.

Your obedient servant,

C. M. CLAY.

No. 2.

LOUISVILLE, *December* 14, 1848.

DEAR SIR: I would be gratified to see you relieved of the judgment in the name of Eliza Lang against you in the Jefferson circuit court. I deem it a hardship, acting, as you were, in obedience to the order of a superior officer.

This case was tried upon the single issue of "not guilty." Another plea was filed justifying the trespass, on the ground that you were a military officer, duly commissioned, in the service of the United States, acting in pursuance of military orders, and in the necessary discharge of military duty. This was the *substance* of the plea. A demurrer was filed and sustained upon the ground that such orders could confer no such power. No military officer can give authority, on any pretext, to trespass upon the rights of the citizen. The military is subservient to the civil authority. If it was necessary to enter the house of the plaintiff to recapture the deserters, a legal authority for that purpose should have been obtained from a civil magistrate. This was the rule of law applied to your case.

As I now recollect the *facts*, the verdict does not exceed the amount of actual damage proved to have been sustained. There was no proof of any active participation by you in the violence upon the property of the plaintiff, but that you were present and in command of the party. There was certainly nothing in the evidence to justify the belief that you were acting in a lawless and licentious spirit. On the contrary, I had no doubt that you were acting, as you supposed, in the line of your duty.

I again repeat that I would be much gratified if you could be in-

demnified from the loss which has been thus imposed upon you by a too faithful performance of a military duty.

Truly yours, &c.,

W. F. BULLOCK.

No. 3.

I certify that, in the month of July, in the year 1846, I, E. H. Field, held the commission of lieutenant colonel in the 1st regiment of Kentucky volunteer cavalry; that on the 3d day of said month I was in command of said regiment, at or near Louisville, Ky.; that there was an order issued that no soldier should leave camp; that, about 12 o'clock at night on the 3d of July, the officer of the guard reported to me that several men had left camp without leave; the said officer was then ordered to take his guard and arrest them; at 2 o'clock on the same night the officer sent word to camp that he had followed them to the house of one Eliza Lang, or Eliza Bowles, where he found the house barred against him; that, after demanding admittance, which was refused, he was then fired upon from the house, which wounded one or two men, and killed one horse. I then ordered Capt. C. M. Clay, with thirty men, to his assistance, with an order to arrest the deserters, and bring them to camp; in doing so, it was necessary to break the doors, for which there was suit brought against the said Clay.

Given under my hand this 10th day of December, 1848.

E. H. FIELD.

The above statement was sworn to before me, a justice of the peace in and for the county of Woodford.

Given under my hand this 10th day of December, 1848.

J. H. ELLIOTT, *J. P.*

No. 4.

LOUISVILLE, *October* 23, 1848.

DEAR SIR: I have this day drawn on you, at ten days' sight, for $533 20, payable to my own order, in full of principal, interest, and costs, of the judgment of Eliza Lang against you, which you will please honor.

I am, sir, yours truly,

WM. J. HEADY.

Capt. C. M. CLAY,
Richmond, Kentucky.

HOUSE OF REPRESENTATIVES, *March* 1, 1848.

SIR: In answer to your inquiries in relation to the claim of Capt. C. M. Clay for property lost in the service, I have the honor to state that I understood from Capt. Clay and others that he was ordered from Camargo suddenly, leaving his property behind, no means of transportation being furnished. I know of his having a great deal of property, but cannot speak of its value. The horse and pistols were taken by the enemy; and I believe the value, as stated in the account, not too high—horse $150, pistols $120. I have no hesitation in expressing my belief that Captain Clay lost property of the kind and value stated in his account, without any fault or negligence on his part.

JOHN P. GAINES.

Gen. CROWELL.

IN THE HOUSE OF REPRESENTATIVES—*March* 14, 1848.

The Committee of Claims, to whom was referred the petition of Cassius M. Clay, report:

That they have examined the various items of property, for the loss of which the petitioner claims compensation, and have come to the conclusion to allow him the sum of $760 for the following articles, to wit:

Winter and summer clothes, sash and epaulets, bedding, camp and clothes chests, kitchen and table furniture.....	$300 00
1 horse foundered.....	150 00
1 horse taken by the Mexicans.....	150 00
1 mule	40 00
2 duelling pistols, understood to be horsemen's pistols, and revolver.....	120 00

The petitioner claims compensation for the property lost, on the ground that he was ordered to disperse, by forced marches, some robbers that threatened the train from Camargo to Monterey, and was obliged, for want of transportation, to leave his property in camp; and having been taken prisoner at Encarnacion, never returned, and his property was wholly lost. All articles of property necessary and proper for the comfort and convenience of the petitioner in the camp, and lost in the manner represented, ought to be paid by the government, and the committee report a bill accordingly, and recommend its passage. The petition marked A, and the statement of Major Gaines, marked B, are made part of this report, and directed to be published.

A.

To the honorable the Congress of the United States of America:

Your petitioner would respectfully state: In the last of November or first of December, 1846, he was ordered by Colonel Marshall to disperse, by a *forced* march, some robbers threatening the train from Camargo to Monterey; that upon arriving at the point of supposed attack, he was ordered to Monterey; from Monterey to Saltillo, by General Marshall; from Saltillo to Palomas, by General Butler; from Palomas to Encarnacion, by Major Gaines, where he was taken *prisoner*. In consequence of all which, no transportation having been allowed him, everything he possessed was lost. The camp was said to have been plundered at Camargo by the troops, of which your petitioner has no evidence; all he knows about it is *his total loss* of the following articles, without fault or neglect of his:

1 gold watch, *cost*	$350 00
2 suits of clothes, *new*, $65 each	130 00
12 *new* shirts, $5 each	60 00
1 hunting rifle	35 00
Other suits of clothes, winter and summer, sash and epaulets, bedding, camp and clothes chests, kitchen and table furniture, &c., say	300 00
1 horse foundered by soldiers riding, and dead	150 00
1 horse taken by the Mexicans	150 00
1 mule forced to sell at $40, worth $80, *cost*	40 00
2 duelling pistols and 1 revolver, worth	120 00
	1,373 00

Your petitioner states the entire loss of his *papers*, which will be an injury to him in amount nearly as great as the sum above stated; but for this he asks no remuneration. He does not expect to be paid for his patriotism; but plundered, as he has been, of his property, first by the troops at Camargo, and then robbed abroad by the Mexicans, he is somewhat embarrassed in his pecuniary affairs, and only asks of "Uncle Sam" to pay a part, at least, of his losses. The facts of the loss, and so forth, are incapable of *positive* proof; for their general accuracy, you are referred to the Hon. J. P. Gaines, one of your honorable body; and for their *entire* truth, your petitioner pledges his "sacred honor;" a voucher considered sufficient in the settlement of officers' accounts in ordinary transactions, and which, should it be made conclusive in this case, will very much oblige one who has received many hard knocks and no "*glory*."

Your petitioner "prays" this *once*.

C. M. CLAY,
Once Captain Kentucky Mounted Volunteers.

P. S.—Your petitioner had two violins broken to pieces by the overturning of the wagon in *Texas;* but as he and U. S. have

suffered alike in that unfortunate land, he asks for these last no remuneration.

C. M. C.

B.

HOUSE OF REPRESENTATIVES,
March 1, 1848.

SIR: In answer to your inquiries in relation to the claim of Captain Cassius M. Clay for property lost in the service, I have the honor to state that I understood from Captain Clay, and others, that he was ordered from Camargo suddenly, leaving his property behind, no means of transportation being furnished. I know of his having a great deal of property, but cannot speak of its value. The horse and pistols were taken by the enemy, and I believe the value, as stated in the account, not too high: horse $150, pistols $120. I have no hesitation in expressing my belief that Captain Clay lost property of the kind and value stated in his account, without any fault or negligence on his part.

JNO. P. GAINES.

Gen. CROWELL.

IN THE HOUSE OF REPRESENTATIVES—*February* 23, 1855.

A BILL for the relief of Cassius M. Clay.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Treasury pay to Cassius M. Clay, out of any money in the treasury not otherwise appropriated, the sum of five hundred and thirty-three dollars and twenty cents, in full payment of a judgment obtained against him by Eliza Lang, for damages done to her property by said Clay in July, eighteen hundred and forty-six, by order of his superior officer, Lieutenant Colonel E. H. Field, of the first regiment of Kentucky volunteer cavalry, then in camp near Louisville, Kentucky.

34th CONGRESS, 1st Session. } HO. OF REPRESENTATIVES. { REPORT C. C. No. 22.

SUSAN DECATUR.

JUNE 28, 1856.—Committed to a Committee of the Whole House, and ordered to be printed.

The COURT OF CLAIMS submitted the following

REPORT.

SUSAN DECATUR *vs.* THE UNITED STATES.

To the honorable the Senate and House of Representatives of the United States in Congress assembled:

The Court of Claims respectfully presents the following documents as the report in the case of Susan Decatur *vs.* The United States:

1. The petition of the claimant.
2. Brief of the solicitor.
3. Opinion of the court, refusing an order to take testimony, delivered by Chief Justice Gilchrist.

By order of the Court of Claims.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court at Washington, this twenty-fifth day of June, A. D. one thousand eight hundred and fifty-six.

[L. S.]

SAM'L. H. HUNTINGTON,
Chief Clerk Court of Claims.

To the honorable the Judges of the Court of Claims:

The petition of Susan Decatur, widow of the late Com. Stephen Decatur, in behalf of herself and others, the legal representatives of the capters of the frigate Philadelphia, respectfully showeth:

That during the war between the United States and Tripoli, the U. S. frigate Philadelphia, commanded by Commodore Bainbridge, belonging to the squadron which had been ordered to the Barbary coast, was stranded on rocks, and in that situation was captured by the enemy. That the frigate was afterwards got off, without material damage, and taken into the Tripolitan service, manned and got ready for sea, and was moored in the harbor of Tripoli, within pistol-shot of the Tripolitan marine of upwards of one hundred pieces of heavy cannon, and land batteries of one hundred and fifteen pieces of heavy artillery. That by the loss of the Philadelphia, the force of Commodore Preble's squadron was so much reduced that hostilities could not be

prosecuted on a scale at all commensurate with the service to be performed, and that in this conjuncture Stephen Decatur, the husband of your petitioner, then a lieutenant commanding the schooner Enterprise, conceived and proposed the idea of entering the harbor of Tripoli by night, and of boarding and re-capturing the Philadelphia, and volunteered his service to execute the plan; that after deliberation his offer was accepted, and the enterprise was executed in a manner which has received the undivided admiration of all who have since read the recital of this exploit. That in view of the hazards to which this undertaking was exposed, and the necessity of secrecy and celerity in in its execution, Commodore Preble gave a peremptory order to Lieutenant Decatur not to attempt to bring the frigate out of the harbor; but, in case of success, to be sure to set fire to the gun-room, berths, cockpit, store-rooms, &c., and then, after blowing out her bottom, to abandon her. That Lieutenant Decatur could have safely brought the frigate out of the harbor, but did not, in consequence of the peremptory order aforesaid of Commodore Preble. February 16, 1804, was the day on which she was destroyed.

And your petitioner alleges that, by virtue of the act of Congress of 23d April, 1800, (2 Stat. 52,) the captors of the Philadelphia were entitled to the proceeds thereof as prize of war; and that, the vessel having been destroyed by the peremptory order of the commander of the squadron, they are entitled to the value of said vessel from the United States, by whose officer and for whose benefit such order was given.

That your petitioner is the sole owner of so much of said claim as she would be entitled to as the widow of the late Stephen Decatur; that she has heretofore presented this claim to Congress, and its action, so far as she is informed, has been as follows: In the 18th, 19th, 20th, 21st, 22d, 23d, 24th, 30th, 31st, 32d, and 33d Congresses, favorable reports have been made, and no adverse report has been made. In the 19th, 20th, 23d, and 30th Congresses the bill for your petitioner's relief was laid on the table in the House. It has five times passed the Senate.

And your petitioner will ever pray, &c.,

SUSAN DECATUR.

A. H. LAWRENCE,
Attorney for Petitioner.

DISTRICT OF COLUMBIA, }
Washington county, } *ss.*

On this twenty-eighth day of June, A. D. 1855, personally appeared before me, Lewis Carbery, a justice of the peace in and for said county, Susan Decatur, and made oath that the facts stated in the foregoing petition are true to the best of her knowledge and belief.

LEWIS CARBERY,
Justice of the Peace.

COURT OF CLAIMS.—(No. 26.)

On petition of Susan Decatur.—Brief of the Solicitor.

The claim is founded on the act of Congress of 23d April, 1800, section 5, 2d volume, page 52, declaring "that *the proceeds* of all ships and vessels, and the goods taken on board of them, *which shall be adjudged good prize*, shall, when of equal or superior force to the vessel or vessels making the capture, be the sole property of the captors; and when of inferior force, shall be equally divided between the United States and the officers and men making the capture.

It is not stated that Decatur either captured the "Philadelphia," for which his wife asks compensation as for a prize, or that the vessel was adjudged good prize; but that, acting under Preble's orders, he destroyed the vessel in the harbor of Tripoli, and that he might have captured it had he been ordered to do so.

If such a claim is maintainable, may not a claim be maintained for every vessel destroyed during the war?

The fact that the party got on board the vessel was accidental and circumstantial. The party went out on purpose to destroy the vessel, and got on board of her only to effectuate that object. Such captures are not within the letter or the spirit of the prize act, which refers only to what is taken and brought away, not to things taken and destroyed at the same time.

2. The questions of law pressed by the claimants have, therefore, no bearing whatever on the case. But if they had, it is only maintained that capture vests property in the captors against all the world save against the government; so that, if there had been a capture in any proper sense, how does the argument advance the claim, seeing that it is admitted there is no property thereby vested except against persons and parties who are not parties here; whereas against the United States, the party here, it passes no title whatever by the laws of war.

3. The property there is in the sovereign. The right of the captor is nothing more than the right to hold it for the sovereign, to be disposed of according to the will of the government; and property, as against the government, is only to be acquired in accordance with the prize law; or, in other words, that whether there be anything due to claimants, depends upon their bringing themselves within the provisions of the act providing for the distributing the prize.

This point is expressly decided in 10th Wheaton, page 310, in the case of the Dos Hermanos.

4. It is not pretended here that the act which alone gives any interest has been complied with.

So no interest is vested by the capture. See the case of the Dos Hermanos, above cited. All the questions are ably discussed in the 1st volume reports of 2d session 19th Congress, report No. 74, by Mr. Storrs, one of the first legal minds in the country.

5. But it is generally argued that, as Commodore Preble, acting for the United States, ordered the destruction of the vessel, Decatur was thereby prevented from bringing the vessel to condemnation, and the

United States are precluded from availing themselves of the failure to comply with the law. If this reasoning be good, what will prevent the government from being liable for prizes which any subordinate and his comrades may have thought they could have made if they had been permitted by their superiors? Are we now to supervise Commodore Preble's directions in his command, and say here, now, that he erred?

6. No claim for *what might* have been done can be maintained. It may be supposed, with good reason, that much more might have been done than was done; that Commodore Preble erred very much in not ordering more; but as he was the lawful commander of the United States forces, it is very illogical to base a legal claim upon the hypothesis that he ought to have given a different order.

M. BLAIR.

SUSAN DECATUR *vs.* THE UNITED STATES.

Chief Justice GILCHRIST delivered the opinion of the court.

The claimant states the following case:

During the war between the United States and Tripoli, the frigate Philadelphia was stranded on the rocks on the Barbary coast, and in that situation was captured by the enemy. She was got off the rocks, manned, and made ready for sea by the Tripolitans, and moored in the harbor within pistol-shot of numerous batteries of heavy artillery. Lieutenant Decatur, the husband of the claimant, then commanding the schooner Enterprise, volunteered to board and recapture the Philadelphia. His offer was accepted; but in view of the hazards to which the undertaking was exposed, and the necessity of secresy and celerity in the execution, Commodore Preble gave him a peremptory order not to attempt to bring the frigate out of the harbor, but in case of success, to be sure to set fire to the gun-room. berths, cock-pit, store-rooms, &c., and then, after blowing out her bottom, to abandon her. Lieutenant Decatur, it is alleged, could have safely brought the frigate out of the harbor, but did not do so on account of the peremptory order of Commodore Preble. He succeeded in performing his duty, and destroying the frigate in a manner which received and entitled him to the admiration and applause of his country.

It is very evident from this statement that Lieutenant Decatur did not *capture* the Philadelphia, in a sense which entitled him to her proceeds or value as prize of war, within the meaning of the act of the 23d of April, 1800. The duty which he so gallantly performed was that of her destruction, and not of her capture. His peremptory orders were to set her on fire, and, after blowing out her bottom, to abandon her. These orders were inconsistent with the idea of a capture. He was to retain possession of her only so long as was necessary to enable him to take the proper measures for her destruction. His orders were not only to destroy her, but they were so precise as to exclude the conclusion that he was to capture her. The object of the expedition was to destroy the frigate. In order to effect this object,

it was necessary to obtain possession of her. But this possession was merely incidental, and was only one of the means to be adopted to effect the main purpose. It was not intended to obtain the possession for the purpose of bringing the frigate into port, and of obtaining a decree of condemnation, but for the mere purpose of her destruction. After the possession was obtained, she might or might not have been safely brought out of the harbor of Tripoli. That is a mere speculation as to probabilities. But the question before us is not whether she might have been captured, in a legal sense, but whether she was actually captured within the meaning of the law. The question is, whether this claim is in the nature of the legal right secured by the prize act. It is not to be determined by the law of nations, but by the true intent and meaning of the acts of Congress.

The 5th section of the act of April, 1800, (2 St., 52,) provides that "the proceeds of all ships and vessels, and the goods taken on board of them, which shall be adjudged good prize," * * * shall be the property of the captors. This is substantially a provision that the vessel is to be condemned, and that there is to be a legal adjudication that she is good prize, before the proceeds are to become the property of the captors. A sale by the captors does not divest the court of admiralty of its jurisdiction. In the case of Williams *vs.* Armroyd, (7 Cranch, 423,) it was held that a sale before condemnation by one acting under the possession of the captor does not divest the court of jurisdiction, and the condemnation relates back to the capture, affirms its legality, and establishes the title of the purchaser. In the case of the Mary Ford, (3 Dall., 188,) it was held that immediately on a capture the captors acquired such a right as no neutral nation could justly impugn or destroy, but it is not intimated that they acquired an absolute right. Property captured in war belongs, in the first instance, to the nation. The Dos Hermanos, (10 Wheaton, 310.) Whatever right the captors acquire is derived by grant. In the case of the Sally, (8 Cranch, 382,) it was held that the prize act of June 26, 1812, operated as a grant from the United States to the captors of all property rightfully captured by commissioned privateers as prize of war. This shows that the mere taking possession of the property does not, of itself, vest the title to it in the captors. As the title depends on a grant, it must conform to the conditions of the grant. These conditions are that the vessel, after having been captured, shall be brought into port and condemned as lawful prize. In the case of Jecker *vs.* Montgomery, (13 Howard, 515,) Mr. Chief Justice Taney says: "As a general rule it is the duty of the captor to bring it within the jurisdiction of a prize court of the nation to which he belongs, and to institute proceedings to have it condemned."

But, as we have before said, the question is whether the Philadelphia was *captured* in the legal sense of the word. In the case of the Grotius, (9 Cranch, 368,) it was held that, in order to constitute a capture, some act should be done indicative of an intention to seize and retain as prize; it is sufficient if such intention is fairly to be inferred from the conduct of the captor. In this case there is nothing from which such an intention can be inferred. The orders given, and the acts done, show that the sole object in taking possession of the frigate was to

destroy her. The claimants have the same rights as, and no other rights than other officers and men acquire, by the destruction of an enemy's property in war by the orders of their commanding officers, and it was never supposed that such a destruction of property was the foundation of a legal right.

While our opinion is, that the claimants have no legal cause of action against the United States, which can be enforced in this court, we of course shall not be understood as wishing to detract from the merit of the gallant men who accomplished this enterprise, or to pluck a single leaf from their laurels. This feat of arms was performed under circumstances of peculiar difficulty and danger, with consummate skill, at night, in the face of powerful batteries, and with the most perfect self-possession and courage. By a vigorous and well organized attack the enemy were suddenly deprived of the efficient means of resistance which the possession of the frigate would have afforded to our operations. The achievement has never been forgotten. It has always been regarded as one of the most brilliant of our naval successes. The case commends itself to the far-sighted liberality of Congress, by the fact that the most effective mode of insuring a spirit of devotion and self-sacrifice in naval and military operations, is to recognise the gallantry of the actors in them by such rewards as may stimulate the exertions of others. But such considerations are to be weighed by Congress, and not by this court. Our duty is performed by expressing our opinion on the case in its legal aspects, and that opinion is, that however strong the claims of the petitioner may be upon Congress, they have no legal cause of action against the United States.

34th CONGRESS, 1st Session. } HO. OF REPRESENTATIVES. { REPORT C. C. No. 23.

THOMAS H. BAIRD, ADMINISTRATOR.

[To accompany bill C. C. No. 10.]

JUNE 28, 1856.

The COURT OF CLAIMS submitted the following

REPORT.

THOMAS H. BAIRD *vs.* THE UNITED STATES.

To the honorable the Senate and House of Representatives of the United States in Congress assembled:

The Court of Claims respectfully presents the following documents as the report in the case of Thomas H. Baird *vs.* The United States:

1. The petition of the claimant.
2. Evidence exhibited in the case, and transmitted to the House of Representatives.
3. Memorial and accompanying documents referred by the House of Representatives to the Court of Claims and returned to that House in a separate envelope.
4. Brief or argument of claimant.
5. Brief of the solicitor.
6. Opinion of the court, ordering a favorable bill.
7. Dissenting opinion of Judge Blackford.
8. Bill for the relief of Thomas H. Baird.

By order of the Court of Claims.

In testimony whereof, I have hereunto set my hand and affixed the [L. S.] seal of said court at Washington, this twenty-fifth day of June, A. D. 1856.

SAMUEL H. HUNTINGTON,
Chief Clerk Court of Claims.

To the honorable the Judges of the Court of Claims of the United States:

The petition of Thomas H. Baird, a citizen of Pennsylvania, respectfully represents: That his late father, Dr. Absalom Baird, was a commissioned surgeon in the army of the Revolution, and by acts of Congress, particularly that of 17th January, 1781, became entitled to half-pay for life and other emoluments.

That his regiment was dissolved, and he was discharged from ser-

vice on the 29th March, 1781; and his stipulated annuity commenced running on that day.

That as amounts became due, he made immediate and frequent applications to the proper officers for payment, and was denied.

That by the laws and regulations of the old Congress, interest was allowed on all claims, and to all creditors of the United States from the time that sums became due.

That Dr. Baird therefore ought, of right, to have received his accruing half-pay, and *interest* upon any amounts refused or withheld.

That by the "Commutation Act," passed 23d March, 1783, it was provided that "the officers" shall have "at the end of the war" five years' full pay, in lieu of half-pay for life, in *money* or in securities, &c. (See Document No. 42, Vol. 2, for 1837–'38, and Journal, Vol. 4, p. 178.)

That by this new contract Dr. Baird became entitled not only to the arrears then due to him, but also to five years' full pay, being the granted commutation of his half-pay for life.

That he was denied the benefit of this substitution. Payment was refused, and after repeated demands and continued efforts with the accounting officers, he at length, on the 28th of January, 1794, presented his petition to Congress for relief. (See House Journal, Vol. 2, p. 50.) The case was continued without action by the House until 21st December, 1796, when it was "ordered that Dr. Baird have leave to withdraw his petition."

Your petitioner avers that the claim was never abandoned, nor was there any *laches* or unreasonable delay in the prosecution of it. Dr. Baird had removed to Western Pennsylvania, (perhaps in 1786) and died there in October, 1805, leaving several children, all in infancy or minority.

That when your petitioner, one of his surviving sons, came of age, he took out letters of administration upon the estate of his deceased father, and on the 13th of February, 1818, renewed the application to Congress for relief.

That no action could be obtained until June, 1836, when an act was passed, granting five years' full pay as *commutation*, "without interest." (See House Journal, 1829–'30, January 4th; also Journals, 1833–'34, p. 39—1834–'35, pp. 84, 492.)

That under this law twenty-four hundred dollars were paid; but your petitioner believing that a large sum was still due, on the 12th of December, 1837, again presented himself to Congress, praying further and full relief.

That on the 6th of March, 1838, a bill in favor of "the legal representatives of Dr. Absalom Baird" was reported by Mr. Underwood, and was read twice and committed. (See Journal, p. 557.)

That no action was had, and your petitioner again urged his claim, until, on the 9th of February last, Mr. Ready, from the Committee of Claims, reported in his favor, and introduced a bill, granting to the heirs of Dr. Absalom Baird, &c., $16,230, "in full for arrears of pay due to them for the services of their said ancestor."

That the said bill did not pass into a law, and has been referred by

a resolution of Congress to this honorable court for the purpose of an examination into the merits and legal validity of the claim, &c.

Your petitioner therefore, as the legal administrator of Dr. Absalom Baird's estate, and on behalf of himself and the other heirs of the said Dr. Baird, late surgeon of Col. Baldwin's regiment of artificers in the revolutionary army, prays that the case he presents may receive as early consideration as convenience and due order will allow, and that such decision shall be made as truth and justice demand.

The persons interested with your petitioner in the claim are Mrs. N. Baird, who holds by transfer the right of John Baird, (eldest son of Dr. Baird) now deceased; George Baird, surviving brother, who also has the interest (he alleges) of George B. Hodge, only child of a deceased sister; and the children of William Baird, a brother who died many years ago. There are five equal shares represented; but the only surviving children of Dr. Baird are George Baird and your petitioner.

THOMAS H. BAIRD.

PENNSYLVANIA, } *ss.*
Washington County. }

Before me, a justice of the peace in and for said county and State, personally appeared Thomas H. Baird, and being sworn according to law, says, that the facts stated in the foregoing petition are true to the best of his knowledge and belief.

THOMAS H. BAIRD.

Sworn and subscribed before me the 29th of June, 1855.

JAMES McALISTER, J. P.

STATE OF PENNSYLVANIA, } *ss.*
Washington County. }

I, William S. Moore, prothonotary of the court of common pleas in and for said county, do hereby certify that James McAlister, esq., before whom the foregoing affidavit was made, was at the time and now is an acting justice of the peace in and for said county, duly commissioned and qualified; that his signature thereto is genuine, and that full faith and credit are and ought to be given to all his official acts.

[L. S.] Given under my hand and the seal of said court at Washington, the 12th day of July, A. D. 1855.

WM. S. MOORE, *Prothonotary.*

THOMAS H. BAIRD *vs.* THE UNITED STATES.

The petitioner begs leave to offer the following evidence in this case, viz:

I. In reference to the original service. (Although this was satisfactorily proved by papers originally filed, yet, these having been

lost or mislaid, additional evidence has been procured from the records of the government:)

1. Dr. Baird's appointment as surgeon of Baldwin's regiment; commission on file in Department of State, as certified by the Secretary. Certificate of J. Minot, Commissioner of Pensions.

2. Continuation of service until reduction of the regiment. Certificate of pay, by R. J. Atkinson, Third Auditor Treasury. Certificate of Colonel Baldwin, (certified copy from State Department.)

II. In reference to the statute of limitations:

1. The petition of Dr. Baird to Congress, July 27, 1786, reciting previous application to commissioner of army accounts, (certified copy from State Department.)

2. The endorsements on the above mentioned petition, stating its presentation to Congress; its reference, on 28th July, 1786, to commissioner of army accounts; his report thereon, received 28th August, 1786; and the final reference of the petition and report to a committee.

3. Report of commissioner of army accounts, dated August 26, 1786.

4. Letters of Dr. Rogers, showing a renewed demand in 1787.

5. The petition of Dr. Baird to Congress, for half-pay, &c., January 28, 1794; its reception and reference to a committee.

III. To avoid even the imputation of *laches*, evidence is offered of the continued claim of Dr. Baird, by his petitions to Congress, praying for the allowance of his *half-pay, &c.*, renewed from time to time, until 21st December, 1796; and the numerous petitions of Thomas H. Baird, his son and legal administrator of his estate, up to this time. See "List of Private Claims," vol. 1, p. 66.

THOMAS H. BAIRD *vs.* THE UNITED STATES.

The petition in this case was drawn up at the residence of the petitioner, in Washington county, Pennsylvania, from memoranda and documents then in his possession, and not from papers in the archives of Congress, to which he had not access. Since his arrival at the seat of government, he has procured volumes containing a "List of Private claims," and finds that, in reference to the claim of Dr. Absalom Baird, the following proceedings have been had:

Petition of Dr. Absalom Baird. Half-pay as revolutionary surgeon. Select.

Petition of Dr. Absalom Baird. Half-pay as revolutionary surgeon. Claims, February 25, 1795. Adverse. Referred to Committee of the Whole House.

Petition of Dr. Absalom Baird. Half-pay as revolutionary surgeon. Journal, p. 626, December 21, 1796. Adverse. Leave to withdraw.

Petition of heirs of Dr. Absalom Baird. Commutation pay and bounty land. Journal, p. 242. Pensions and Revolutionary Claims, March 6, 1818. Adverse. Laid on the table.

Petition of heirs of Dr. Absalom Baird. Commutation pay and bounty land. Journal, p. 136. Revolutionary Claims, January 18, 1826. Adverse. Laid on the table.

Petition of heirs of Dr. Absalom Baird. Commutation pay and bounty land. Journal, 19th Congress, 2d session, p. 76. Resolution; Revolutionary Claims.

Petition of heirs of Dr. Absalom Baird. Commutation pay and bounty land. Journal, 21st Congress, 1st session, p. 122. Revolutionary Claims.

Petition of heirs of Dr. Absalom Baird. Commutation pay and bounty land. Journal 22d Congress, 1st session, p. 386. Revolutionary Claims.

Petitions, (two.) Journal, p. 416.

Petition of heirs of Dr. Absalom Baird. Commutation pay and bounty land. Journal, 22d Congress, 2d session, p. 30. Revolutionary Claims.

Petition of heirs of Dr. Absalom Baird. Commutation pay and bounty land. Journal, 23d Congress, 1st session, p. 39. Revolutionary Claims.

Petition of heirs of Dr. Absalom Baird. Commutation pay and bounty land. Journal, 23d Congress, 2d session, p. 84. Revolutionary Claims. Report No. 136, favorable. Referred to Committee of the Whole House.

Petition of heirs of Dr. Absalom Baird. Commutation pay and bounty land. Journal, 24th Congress, 1st session, p. 63. Revolutionary Claims. Report No. 63, favorable. Passed.

Petition of heirs of Dr. Absalom Baird. Interest on commutation pay, &c. Journal, 25th Congress, 2d session, p. 48. Revolutionary Claims. Report No. 640, favorable. Bill No. 617. Postponed.

Petition of heirs of Dr. Absalom Baird. Interest on commutation pay, &c. Journal, 31st Congress, 1st session, p. 396. Revolutionary Claims. Discharged. Laid on the table.

(See vol. 1, "List of Private Claims," p. 66.)

PENSION OFFICE, *March* 6, 1856.

This is to certify that the name of Absalom Baird is borne upon the roll of Baldwin's regiment of artificers, as a surgeon, from March 20, 1780, but that said roll does not show the duration of his service.

J. MINOT,
Commissioner of Pensions.

UNITED STATES OF AMERICA,
Department of State.

To all to whom these presents shall come, greeting:

I certify that the papers hereunto annexed are true copies, transcribed from and carefully collated with the original papers on file in this department.

In testimony whereof, I, William L. Marcy, Secretary of State of the United States, have hereunto subscribed my name, and caused the seal of the Department of State to be affixed.

Done at the city of Washington, this eleventh day of March, A. D. 1856, and of the Independence of the United States of America the eightieth.

[SEAL.]

W. L. MARCY.

To the United States in Congress assembled:

The petition of the subscriber humbly showeth, that he was appointed surgeon to the regiment of artificers, commanded by Lieutenant Colonel Baldwin, on the 20th of March, 1780, and continued in that service until the regiment was reduced in the year 1781; consequently was in the service when the resolve of the 17th January, 1781, was passed, allowing half-pay, &c., to the medical staff. But, having called at the pay office, was informed by Mr. Howell (Mr. Pierce, the commissioner, being at Boston) that it is doubted whether he is entitled to commutation; he therefore begs that Congress would be pleased to order him relief in the premises; and your petitioner shall ever pray.

JULY 27, 1786. A. BAIRD.

On the back of the above petition are endorsed the following entries, viz:

No. 56. Petition Absalom Baird. Read July 28th, 1786. Referred to commissioner army accounts to report; reported August 28th, 1786. September 5th, 1786, report and petition referred to Mr. Bayard, Mr. Harrison, Mr. Henry.

Accompanying the above petition is a letter from the petitioner addressed to Hon. John Bayard, delegate in Congress. Also, a certificate from Colonel J. Baldwin, in the words following, to wit:

This certifies that Doctor Absalom Baird (of Wilmington, on Delaware) did serve as surgeon to the regiment of artificers, in the late army of the United States, under my command, which service he performed with attention and diligence, to general satisfaction, until the regiment was deranged by order of Congress.

JED. BALDWIN,

Colonel of Engineers and Comm't of Artificers in the late army.

BROOKFIELD, *September* 25, 1786.

Also accompanying the above is the commission of Absalom Baird, as a surgeon in the regiment of artificers, commanded by Lieutenant Colonel Baldwin, from 20th March, 1780.

TREASURY DEPARTMENT,
Third Auditor's Office, March 7, 1856.

SIR: With regard to your application in relation to Dr. Absalom Baird, as a surgeon of Colonel Baldwin's regiment of artificers, du-

ring the war of the Revolution, I have to inform you that it appears from the printed books of printed final-settlement certificates, that Dr. Absalom Baird received from the commissioner of army accounts a final-settlement certificate on the 1st August, 1780, for $48 30; and on the 1st March, 1784, he received another for $554 24. The first mentioned certificate was numbered 39189, and the latter 39216.

Very respectfully, your obedient servant,

ROBERT J. ATKINSON,
Auditor.

TH. H. BAIRD, Jr., Esq.,
Department of the Interior, Washington city, D. C.

DEPARTMENT OF STATE,
Washington, March 17, 1856.

SIR: I have to inform you, in reply to your note of the 13th inst., that the revolutionary records on file in this department furnish evidence of the fact that Absalom Baird served as surgeon's mate and surgeon in the Continental army, from 30th December, 1779, to 20th April, 1781, and that no evidence can be found of his having served at an earlier period of the war.

I am, respectfully, your obedient servant,

J. A. THOMAS,
Assistant Secretary.

TH. H. BAIRD, Esq.

OFFICE OF ARMY ACCOUNTS,
New York, August 25, 1786.

The commissioner for settling the accounts of the late army of the United States, to whom was referred the petition of A. Baird, requesting the commutation in lieu of half-pay for life as a deranged surgeon in Baldwin's corps of artificers, begs leave to report:

That Dr. Baird founds his claim on the resolution of January 17, 1781, granting generally the half-pay to the hospital department, and that of May 3d, 1782, granting the same particularly to a surgeon of artificers.

That Congress did, on the 19th of October last, refer to your commissioner a report made by a committee of Congress on the petition of sundry officers of the late corps of artificers for half-pay or commutation, which report your commissioner was directed to take order on, and in the words following, viz:

The committee, consisting of ———, to whom was referred the memorial of several officers of the late corps of artificers, praying that in settling their accounts they may be allowed their commutation of half-pay, as founded in justice, or on the acts of Congress, beg leave to report:

"That the claims of these officers do not appear to be founded on

the usage of nations nor in equity. They believe that half-pay has been allowed to military officers partly from a regard to the hardships and personal dangers to which they were exposed, but chiefly from a consideration that by a long continuance in the military line they may have lost those habits by which they formerly had been enabled to provide for themselves or family, which reasons do not apply so fully to the officers of artificers.

"Your committee are of opinion that their sole rule on this occasion must be the acts of Congress respecting the officers in the corps of artificers, and they do not find any resolution by which they are entitled to half-pay or commutation; on the contrary, they seem to be expressly cut off from any such claim.

"The original act of Congress of May 15, 1778, by which half-pay was promised for seven years, confined the same to *military officers*, which certainly did not include the artificers; and your committee are of opinion that in all subsequent acts which relate to half-pay, the same denomination of officers must be intended, unless in cases where other officers are expressly mentioned. Surely the act of October 2d, 1780, promising half-pay to officers who might be deranged, never could be construed as giving half-pay to any class of officers who had no claim to half-pay, had they continued in service to the end of the war. If any doubts could have arisen whether the artificers were intended in the promise of half-pay, it must be fully removed by the act of the 16th November, 1779; it was then resolved, 'That it be recommended to the several States to allow the corps of artificers, established by Congress the 12th inst., all the benefits provided for officers and soldiers in the line of their quotas, of the Continental battalions, except the half-pay.' After this express exclusion of those officers from the allowance of half-pay, your committee are of opinion that nothing but a subsequent promise, equally pointed and expressed, can give them a title to the same. None such has been made, wherefore they submit the following resolve: 'That the officers of the late corps of artificers in the service of the United States are not entitled to half-pay or the commutation of half-pay.'"

Your commissioner therefore supposes that he is not warranted to grant the commutation to the memorialist unless he has the direction of Congress.

JOHN PEIRCE.

CHARLES THOMPSON, Esq.,
Secretary of Congress.

[No. 1627.] *Certificate for* £578 14*s.* 5*d. specie.*

We do certify, that the State of Pennsylvania is indebted to Absalom Baird, late surgeon of Col. Baldwin's regiment of artificers, Pennsylvania, in the sum of five hundred and seventy-eight pounds fourteen shillings and five pence specie, with lawful interest from the tenth day of April, 1781, being the amount of the residue of the deprecia-

tion of his pay. Pursuant to two acts of assembly passed at Philadelphia, the 18th of December, 1780, and the 10th of April, 1781.

JOHN NICHOLSON.

PHILADELPHIA, *September* 29, 1785.

[One year's interest paid.]

AUDITOR GENERAL'S OFFICE,
Harrisburg, April 15, 1856.

I certify the above to be a true copy of the original remaining on file in this department.

[L. S.] Witness my hand and seal of office the day and year aforesaid.

E. BANKS,
Auditor General.

The following action of Congress in relation to this claim has been had, as appears from the "*List of Private Claims,*" vol. 1, page 66, viz:

Absalom Baird. Half-pay as revolutionary surgeon. Select.

Absalom Baird. Half-pay as revolutionary surgeon. Claims, February 25, 1795. Adverse. Referred to Committee of Whole House.

Absalom Baird. Half-pay as revolutionary surgeon. Petition. Journal, page 626. Claims, December 21, 1796. Adverse. Leave to withdraw.

Heirs of Absalom Baird. Commutation pay and bounty lands. Petition. Journal, 242. Pension and Revolutionary Claims. March 6, 1818. Adverse. Laid on the table.

Heirs of Absalom Baird. Commutation pay and bounty lands. Petition. Journal, 136. Revolutionary Claims, January 18, 1826. Adverse. Laid on the table.

Heirs of Absalom Baird. Commutation pay and bounty lands. Journal, 19th Congress, 2d session, page 76. Resolution; Revolutionary Claims.

Heirs of Absalom Baird. Commutation pay and bounty lands. Petition. Journal, 21st Congress, 1st session, page 122. Petition. Revolutionary Claims.

Heirs of Absalom Baird. Commutation pay and bounty lands. Petition. Journal, 22d Congress, 1st session, page 386. Revolutionary Claims.

Petitions (two.) Page of Journal, 416.

Heirs of Absalom Baird. Commutation pay and bounty lands. Petition. Journal, 22d Congress, 2d session, page 30. Revolutionary Claims.

Heirs of Absalom Baird. Commutation pay and bounty lands. Petition. Journal, 23d Congress, 1st session, page 39. Revolutionary Claims.

Heirs of Absalom Baird. Commutation pay and bounty lands. Petition. Journal, 23d Congress, 2d session, page 84. Revolutionary Claims. Report No. 136, favorable. Referred to Committee of the Whole House.

Heirs of Absalom Baird. Commutation pay and bounty lands. Petition. Journal, 24th Congress, 1st session, page 63. Revolutionary Claims. Report No. 63, favorable; passed.

Heirs of Absalom Baird. Interest on commutation pay, &c. Petition. Journal, 25th Congress, 2d session, page 48. Revolutionary Claims. Report No. 640, favorable.

Bill No. 617; postponed.

Heirs of Absalom Baird. Interest on commutation pay, &c. Petition. Journal, 31st Congress, 1st session, page 396. Revolutionary Claims. Discharged; laid on the table.

The first petition of Dr. Baird to the old Congress of the Confederation was dated July 27, 1786, a few days before the expiration of the limitation in the resolution of November 2, 1785. This petition was sent to the commissioner of army accounts on the 28th of July, 1786, who reported on the 28th of August, 1786. The report is dated August 26, 1786.

(See certificate of the Secretary of State.)

The second petition was presented to Congress under the new constitution, and must have been some time between 1789 and February 25, 1795, [it was on the 28th of January, 1794,] which is the date of the second one on the "*List of Private Claims.*" The first one is not shown there.

Dr. Baird presented *four* to Congress after the commissioner of accounts denied his commutation prior to July 27, 1786. In all these petitions except the first (in which he claimed "relief") he asks for *half-pay*, &c. He does not ask for *commutation*, as that had been denied by the commissioner, and by the Congress of 1786.

The present petitioner, Thomas H. Baird, the legal representative of Dr. Baird, has presented at different times during the long intervening period, *thirteen* petitions (as shown by the List of Private Claims) prior to that now pending.

STATE OF PENNSYLVANIA, } *ss.*
Washington County. }

I, John Meloy, register for the probate of wills and granting letters of administration in and for said county, do certify that Thomas H. Baird, esq., was appointed administrator of the estate of Dr. Absalom Baird, deceased, on the 9th day of March, A. D. 1809, he having first complied with the law by giving bond and security, as the same remains of record and on file in my office.

[L. S.] Given under my hand and official seal the 3d day of April, A. D. 1856.

JOHN MELOY, *Register.*

In the case of the heirs of Baird.

I admit that Dr. Absalom Baird died on 27th October, 1805.

M. BLAIR, *Solicitor U. S.*

MARCH 11, 1856.

To the honorable the Senate and House of Representatives of the United States in Congress assembled:

The petition of Thomas H. Baird, of the county of Washington, in the commonwealth of Pennsylvania, in behalf of himself and the other heirs of Doctor Absalom Baird, deceased, most respectfully represents:

That your petitioner's said father served during the revolutionary war, as surgeon of Col. Baldwin's regiment of artificers, and became entitled to half-pay and bounty land granted by the several resolutions of Congress; that after he had, in his lifetime, and your petitioner since his death, made repeated efforts to have this just claim allowed, it was at length determined, upon full examination, by a committee to whom the case was referred, that "*Doctor Absalom Baird was, in the opinion of the committee, entitled to the benefit of the provision of the* resolution of Congress of the 7th January, 1781, extending the grant of half-pay for life to the officers of the hospital department and medical staff; that a bill was accordingly reported and passed into a law directing the proper accounting officers of the treasury to settle the account of Dr. Absalom Baird, &c., and to allow his legal representatives compensation equal to five years' full pay of a captain of infantry in the service of the United States, on continental establishment *without interest*, which five years' full pay is the commutation for his half-pay for life."

Your petitioner under this act has received twenty-four hundred dollars; but conceiving that a considerable amount of the claim is still due, upon the principle and facts recognised by the committee in their report already referred to, he comes before your honorable body for further relief. He begs leave to observe that the application was not for a gratuitous remuneration, but was always considered as resting wholly upon the ground of a governmental contract—a stipulated reward for services faithfully rendered. Doctor Absalom Baird on the 29th March, 1781, (the day his regiment was dissolved,) became entitled, by a law of the land, to receive the commutation of his half-pay for life. He had a right to be placed on the same footing with the other officers of his corps. *This*, though frequently demanded, was denied, although, as the committee justly remark, "*no reason can exist for a distinction between those officers and the surgeon of the same regiment.*" Had Dr. Baird obtained, upon his retiring from the army, the amount which is now admitted to have been due to him from the country, it would have greatly advanced his success in life. He had to struggle with difficulties in establishing himself, whilst his colonel and the other officers of his regiment received their commutation, and they and their heirs have enjoyed the benefits of it ever since.

Your petitioner trusts with confidence to the principle asserted by the honorable committee in that passage of their report which is quoted above. Certainly, justice demands that equal measure be granted to all who stand in similar circumstances. The moment his regiment was reduced, Dr. Baird became a *creditor* of the government for the amount of the commutation of his half-pay for life. The *payment*, though required, was *refused;* and your petitioner humbly

thinks that *interest* on the sum from that time to the present is the *legal*, though not adequate compensation.

It is conceived that this fair allowance cannot be resisted upon any other ground than that of imputed negligence in making the demand. This rule of *laches*, however equitable it may be in the transactions of private citizens, does not (it is respectfully submitted) comport with the dignity of a great nation, and particularly when applied to defeat the honest and legal claim of one who had served the country through the perils and privations of the revolutionary struggle. Yor petitioner is happy, however, that the case he now presents is relieved by the facts from any such difficulty. He avers that immediately after the passage of the resolution of the 29th March, 1781, and before the regiment was dispersed, Dr. Baird (in connexion with his brother officers) made repeated efforts to have their half-pay adjusted by calls upon the Quartermaster General, by appeals to the commander-in-chief, and finally by petition to Congress. These endeavors were renewed frequently, as the files of the House of Representatives will show, up to the time of his death, in 1805; and since that period the claim has been constantly urged by your petitioner until it was acted upon. The evidence of this continued demand will be found in the files of Congress already referred to, and in the documents herewith furnished.

Your petitioner, therefore, prays that an act may be passed allowing the commutation of Dr. Baird's half-pay, with interest thereon from the 29th March, 1781, to the 23d June, 1836, (the date of the law for the relief of his legal representatives,) and, after deducting from the gross sum the amount given by that bill ($2,400,) the balance with interest to the present date. This he firmly believes is the proper and legal mode of adjustment in accordance with principle and precedent. It is the rule of liquidation which the government itself has asserted when standing in the relation of *creditor*, as your petitioner has learned by some experience.

Your petitioner also prays that a warrant or warrants may be issued for the "bounty land" to which his said father was entitled by the resolutions of the revolutionary Congress.

And he will, &c.

THOS. H. BAIRD,
Administrator of Dr. A. Baird, deceased.

Heirs of Dr. Absalom Baird.

They state that five years' full pay has been allowed and paid, ($2,400,) without interest. They claim interest from March 29, 1781, to June 23, 1836, when the payment of $2,400 was made. They also claim bounty land and additional pay. The principle not settled by court. As to interest, ————

PHILADELPHIA, *December* 15, 1781.

DEAR SIR: I have just arrived at this place, and have the papers that you wrote Col. Baldwin for. The post is waiting, and does engage to deliver this to you himself, at the receipt of which I hope you will immediately set off for this place, as I shall wait for your arrival, and that only.

I have a letter from Capt. Baldwin to you, but it is at my quarters, and have not time to go after it. I put up at the George tavern. Excuse the above, as I have not time to think or write.

I am, dear sir, your most obedient servant,

GAML. PAINTER.

To Dr. BAIRD.

N. B.—Pray be at this place as soon as possible, as you can judge of the consequences. I shall write no more.

To the honorable the President and Congress of the United States of America, the petition of the officers of Col. Baldwin's regiment of artificers humbly showeth:

That your petitioners engaged early in the common cause of America, even to the best of our abilities, being invited by the Quartermaster General to recruit companies of artificers, and were promised that the companies we should raise should have the same privileges as those in the line of the army. Our expectations were answered in all things (except the half-pay) by a resolve of Congress of November 12, 1779; and the resolve of Congress of October last, for the arrangement of the army, we conceived included the regiment of artificers, or if to be deranged, that we should enjoy all the privileges granted to the line. But after making repeated applications to the Quartermaster General, to whom we were referred by the commander-in-chief, (and whom his Excellency had ordered, together with Gen. Knox, to confer as a committee on the subject, and to make a report to him,) respecting the state of the regiments which were formed by him from time to time, that the matter was not yet settled, but would be in a short time. In such a state of suspense we were kept till the resolve of Congress of March 29, 1781, arrived, by which we find that the regiment is to be dissolved, and that the greater part, if not all, the officers are no longer to be considered in the service of the United States; but as there is no mention made whether the officers are to retire with the same privileges as those of the other regiments reduced last January, we presume that, in the multiplicity of more interesting business, it has been overlooked. We therefore beg leave to remind Congress of our services in the most difficult times, in which we have undergone the same hardships as the best of the army, and many of us having received nothing but the nominal sum of our pay in the depreciated state of the continental currency, having received no consideration from the States to which we belong, and that they would be pleased to grant us the same benefits allowed to the officers of the

other reduced regiments, or make such other provision for us as they in their wisdom shall think proper; and you, &c.

PHILADELPHIA, *July* 8, 1787.

MY DEAR BAIRD: Since I last wrote to you, (which was some time in the winter,) I have conversed with Mr. Pettit, the delegate into whose hands Mr. Bayard put your papers for your commutation of half-pay. He tells me that every exertion had been made to procure a grant of the petition, but that for the report of the Commissioner of the Pay Office, nothing could be done; that the circumstance of the same indulgence being granted to Dr. McKloskey was urged warmly in your favor. The commissioners replied that the grant to Dr. McKlosky had been an error, and that the comptroller of Pennsylvania should be ordered to deduct from his account the commutation for half-pay. I saw your mother this spring in town, and I promised to write to her my success in your affair, but I have forgotten the name of the person to whom she directed me to send the letter. I see very little if any chance of your recovering the half-pay. If you think I can be of any service to you in the affair I will with the greatest pleasure make every exertion, and should be very happy if any benefits should accrue to you from it. We hear no news. The convention are still sitting. Their deliberations are as silent as the grave.

I shall be very happy to hear from you, and shall thank you for medical communications. Adieu, my dear Baird, and believe me to be, as ever, your sincere and affectionate friend,

J. R. B. RODGERS.

PHILADELPHIA, *November* 3, 1787.

MY DEAR BAIRD: I feel the same sensations in addressing you that a debtor does his creditor. I am much in your debt, but do not think that I consider myself insolvent and intend to pay off with one stroke. No, I am juster than the greater part of broken bankrupts. Now for the old story of the commutation. I have not seen any of our delegates lately, but from the train in which Col. Bayard left your affair, and the confidence reposed in the Commissioner of Accounts, I fear that your application will be fruitless. The ———— has done wonders. The dispensary gentlemen have used it, and with much success. As soon as I come again in attendance, which will be in January, I shall use it with my Cathonian, viz: *Tinct. Guaiæ. Volet.* So far for domestic and medical news The field of politics is wide, and many there be who walk, and some who drive John-like in it. For my part 'tis too thorny for me. It ill suits with my disposition or pursuits. If *chalybs preparata* should ever again become a political remedy, then heigh for another attempt to apply it. The affairs of Europe thicken, and this may be in high demand there. Our *quid nuncs* are much employed in discussing the merits and demerits of the Federal Constitution. I cannot pretend to detail the arguments, but

must refer you to the public papers, which go to Fort Pitt. Mr. Baird, counsellor from your part of the world, says that you have good prospects. I am glad to hear it.

Yours, sincerely,

JNO. R. B. RODGERS.

I wish you would make some experiments on the use of vegetable matter on animal poisons.

J. R.

OFFICE OF ARMY ACCOUNTS,
New York, August 25, 1786.

The commissioner for settling the accounts of the late army of the United States, to whom was referred the petition of A. Baird, requesting the commutation in lieu of half-pay for life, as a deranged surgeon in Baldwin's corps of artificers, begs leave to report:

That Dr. Baird founds his claim on the resolution of January 17, 1781, granting generally the half-pay to the Hospital Department, and that of May 3, 1782, granting the same, particularly to a surgeon of artificers.

That Congress did, on the 19th of October last, refer to your commissioner a report made by a Committee of Congress, on the petition of sundry officers of the late corps of artificers, for half-pay, or commutation, which report your commissioner was directed to take order on, and in the words following, viz:

"The committee, consisting of ————, to whom were referred the memorials of several officers of the late corps of artificers, praying that in settling their accounts they be allowed the commutation of half-pay as founded on justice, or on the acts of Congress, beg leave to report: That the claims of those officers do not appear to be founded on the usage of nations nor in equity. They believe that half-pay has been allowed to military officers partly from a regard to the hardships and personal dangers to which they were exposed, but chiefly from a consideration, that by a long continuance in the military line they may have lost those habits by which they formerly had been enabled to provide for themselves or family, which reasons do not apply so fully to the officers of artificers.

"Your committee are of opinion that their sole rule on this occasion must be the acts of Congress respecting the officers in the corps of artificers, and they do not find any resolution by which they are entitled to half-pay, or commutation; on the contrary, they seem to be expressly cut off from any such claim.

"The original act of Congress of May 15, 1778, by which half-pay was promised for seven years, confined the same to *military officers*, which certainly did not include the artificers, and your committee are of opinion that in all subsequent acts which relate to half-pay, the same denomination of officers must be intended unless in cases where other officers are expressly mentioned. Surely the act of October 2, 1780, promising half-pay to officers who might be deranged, never could be construed as giving half-pay to any class of officers who had no claim

to half-pay had they continued in service to the end of the war. If any doubts could have arisen whether the artificers were intended in the promise of half-pay, it must be fully removed by the act of the 16th November, 1779. It was then resolved, that it be recommended to the several States to allow the corps of artificers, established by Congress the 12th instant, all the benefits provided for officers and soldiers in the line of their quotas of the Continental battalions, except the half-pay. After this pointed and express exclusion of those officers from the allowance of half-pay, your committee are of opinion that nothing but a subsequent promise, equally pointed and express, can give them a title to the same. None such has been made, wherefore they submit the following resolve: That the officers of the late corps of artificers in the service of the United States are not entitled to half-pay, or the commutation for half-pay."

Your commissioner, therefore, supposes that he is not warranted to grant the commutation to the memorialist, unless he has the direction of Congress.

J. P.

CHARLES THOMPSON, Esq.,
Secretary of Congress.

To the honorable the Senate and House of Representatives in Congress assembled:

The petition of the undersigned, inhabitants of the borough of Washington, in the Commonwealth of Pennsylvania, respectfully represents:

That they have understood an application is now before your honorable body from the heirs of the late Dr. Absalom Baird, a surgeon in the corps of engineers of the revolutionary army, for a claim of bounty land, commutation pay, &c. As fellow-citizens and neighbors, we have been acquainted with the family of Dr. B. (the applicants) for many years. We have long known them as conspicuous and active participators in most of the useful enterprises of the present age for public utility and national improvement—as citizens of our town and county, public-spirited and benevolent.

In addressing your honorable body, we cannot but assure ourselves that the claim of this family will be settled upon principles of acknowledged equity and justice; and in expressing our own solicitude that it may prove favorable to the applicants, we believe we can state with perfect confidence, that if so, it would coincide with the earnest wishes of this entire community.

We are induced further to press this claim upon the attention of Congress, from the fact that the Messrs. Baird are large debtors to the government, which debt was contracted by the loan of certain funds on deposite in bank, consisting of the notes of some of the unauthorized western banks, which soon after became depreciated, and, comparatively speaking, worthless. That these funds were invested in improving and enhancing the value of the steam-mill establishment in this place, owned by those gentlemen, and which was held and designed by them to secure the payment of this debt to the government.

That (after having previously experienced repeated conflagrations to the amount of several thousand dollars) during the last year, this establishment, which, with additions and improvements, had cost to the amount of 30,000 or 40,000 dollars, and when in full operation, took fire, and in the short space of two hours was an entire ruin. We trust that these circumstances will present claims in favor of the heirs of Dr. Baird of a peculiar character on the attention of Congress.

The undersigned beg leave further to state to your honorable body, that we have witnessed for several years the great anxiety and exertions of the Messrs. Baird to discharge this debt thus contracted; and also, that if their claim is now allowed, their first object will be to liquidate the said debt, which if it is not, distress and absolute ruin must be the result.

With a full assurance that the course which your honorable body will take will be based upon liberal and just principles, and a confident hope that in it the applicants will find sufficient relief in the premises, we have the honor to be,

Your obedient servants,

Jos. Henderson	John Mayes
John Harter	W. W. Irons
R. Officer	John L. Sands
John Wilson	Hugh Wilson
Arch'd Kerr	Jno. Grayson
Wm. J. Wilson	Wm. P. Alrich
John Wilson	C. M. Reed
Wm. T. Fleming	Cyrus Masters
John Ruth	John S. Brady
David Morris	Isaac Kerr
James Blair	W. Hoge
John Marshall	Thomas Officer
John Irono	Robert C. Erskone
Jno. L. Gow	Jonathan Martin
James Gray	James Ruple
George Kuntz	Jno. K. Wilson
James Orr	Rob. Knox
John Wishart	S. Morgan
Thomas H. Hoge	Alexander Reed
Daniel Moore	Robert Latimer
Charles Hawkins	Isaac Leet
James McCoy	H. J. Rahauser
James Shannon	Alex. Sweney
Sam'l Doak	J. Murdock.
James Stevens	

Jeremiah Bauin,	Major	artillery	artificers.	
Joseph Buck,	Lieut.	"	"	
Garrett Brown,	Lieut.	"	"	
Alexander Dow,	Capt.	"	"	
Enos Granness,	Lieut.	"	"	on Col. B.'s roll.
Irish Nathaniel,	Capt.	"	"	
John Jordan,	Capt.	"	"	

Elnezor Little,	Lieut. artillery artificers, on Col. B.'s roll.
Sam'l A. McCoskey,	Surgeon artificers, July 26, 1789.
George Norris,	Lieut. artillery artificers.
Patten Thomas,	Capt. " " on Col. B.'s roll.
Anthony Post,	Capt. " "
Alexander Powers,	Lieut. and qr. master artillery artificers.
Jotham Wright,	Lieut. " "
	on official roll of regiment of artificers.
Jno. Morris Foght,	Lieut. " "
William McCoskey,	Surgeon's mate; see journals May 3d, 1782.
Peter Mills,	Paymaster.

To the honorable the Senate and House of Representatives of the United States in Congress assembled:

The petition of Thomas H. Baird, of Washington county, within the State of Pennsylvania, son and one of the heirs of Absalom Baird, deceased, formerly a surgeon of the continental army, respectfully represents: That in the early part of the year 1776, the said Absalom Baird was appointed a mate in the general hospitals of the continental army, and continued to serve in that capacity, under Doctors Shippen, McKnight, and Fallon, and with Doctors Rogers, Thompson, Smith, &c., until the spring of 1780, when he was transferred to the corps of artificers, under Colonel J. Baldwin, in the capacity of surgeon, and continued to serve in such corps, and as surgeon, until it was dissolved, and in part discharged by Congress on the 29th March, 1781, when he became a retiring officer. That for his services as mate in the general hospitals, and as surgeon to the corps of artificers, he was paid in depreciated currency, which has never been made up to him in conformity with the resolve of the 10th April, 1780. That although various officers of the corps of artificers (at least eighteen) have received land bounty from the United States, and as many as six the benefits of the resolves of the 3d and 21st October, 1780, yet, the half-pay promised by the resolve of the 17th April, 1778, whilst he was a mate in the general hospitals, or the commutation of half-pay, agreeably to the resolve of the 22d March, 1788, has been refused to him in consequence of the exception as to half-pay contained in the resolve of the 16th November, 1779; but your petitioner humbly conceives that whatever opinions may have hitherto prevailed, discriminating between "military officers" and the medical staff, they are conclusively refuted, if not by the practice of the government, by the resolves of the 17th January, 1781, which distinctly embraces "*all* officers in the hospital department and medical staff;" by the resolve of the 8th May, 1781, extending the benefits of commutation to chaplains, who in no point of view can be considered as "military officers;" and by the resolve of the 16th May, 1783, as well as by the proceedings of Congress of the 25th February, 1783, which refer to *all* officers, and designate "their

great sufferings" and "the deficiency of their pay," as the leading reasons for granting the half-pay for life, by the subsequent resolve of the 22d March, 1783, commuted for five years' full pay. Your petitioner would further represent, that in filing the evidence in support of the claim of the heirs of Doctor Absalom Baird, he purports to lay before the committee of your honorable body a full synopsis of the case. Therefore, he now prays that an act may be passed, granting them relief to the same extent as has been granted to others; and, as in duty bound, he will ever pray.

THOMAS H. BAIRD.
By his Attorney in fact,
JOSEPH WATSON.

Synopsis of the claims of Dr. Absalom Baird for commutation, land and depreciation.

Absalom Baird entered upon duty as a surgeon's mate in the general hospital of the middle department in the early part of 1776, and served therein until the 20th March, 1780, when he was transferred to the corps of artificers as a surgeon, in which corps and capacity he served until the 1st of May, 1781, at which time a large portion of it was dissolved under resolve of the 29th March previous. These facts appear by his account, in his own writing, herewith (No. 1) stated up to the 1st August, 1780, and exhibiting a balance then due him of $1,558 25 in specie, credits for depreciation having been given, and no doubt embracing the balance of £109 10*s.*, certified by Dr. Shippen as justly due him on the 18th February, 1780, and by vouchers numbered 2, 3, and 4. The service as hospital's mate is further corroborated by the oath of office and allegiance taken by Dr. Baird, on the 1st March, 1778, in conformity with the resolve of the 3d of February, 1778, also herewith, No. 5.

Land.—By resolve of the 16th September, 1776, vol. 1, page 476, of the Journals of the Continental Congress, land was promised to the officers and soldiers who *shall* engage to serve for *during the war*, and continue to the close of the war, or "until discharged."

Half-pay.—By resolve of the 17th April, 1778, vol. 2d, page 517, half-pay established for military officers *commissioned by Congress and not annexed to any corps of established troops*, and who shall continue therein *during the war*.

Seven years' half-pay.—By resolve of the 15th May, 1778, vol. 2, page 554, half-pay limited to seven years to officers embraced in the foregoing resolve, and to such only who, like Dr. Baird, shall have taken an oath of allegiance.

Half-pay.—By resolve of the 11th August, 1779, vol. 3, page 336, the half-pay provided by the resolve of the 15th May, 1778, extended for life.

Clothing.—By resolve of the 27th of October, 1779, vol. 3, page 381, surgeons and other officers of the hospital department and chaplains put on the footing of officers of the line as to clothing, and agreeably to resolve of the 26th November, 1777, vol. 2, page 351.

Organization of the corps of artificers.—By resolve of the 12th November, 1779, vol. 3, page 389, the *eleven* companies of artificers raised by the quartermaster general (Mifflin) by his orders to Major G. Painter incorporated as a *distinct* corps, officers *commissioned* by Congress, and to rank like the corps of engineers in their own corps. See vol. 3, page 224. This resolution moreover declares that the officers and men of said corps be considered as part of the quotas of eighty battalions as apportioned to the seveal States to which they respectively belong.

Half-pay.—By resolve of the 16th November, 1779, vol. 3, page 392, Congress recommends to the several States to allow the corps of artificers all the benefits provided for officers and soldiers in the line of their quotas of the continental battalions, except half-pay; establishes the pay of the commanding officer as that of a lieutenant-colonel; and of the officers and soldiers, the same as that of the artificers under Colonel Flower.

Land.—By resolve of the 30th September, 1780, vol. 3, page 531, land specifically promised to certain officers of the medical department and to the regimental surgeons.

Regiment of artificers.—By resolve of the 3d October, 1780, vol. 3, pages 532 and 533, the regiment of artificers was declared to be a component part of the regular army after the 1st January, 1781, was assigned to the State of Pennsylvania, and was coonsidered as belonging to such State, and was to be treated in every respect as if originally raised therein.

Half-pay.—By resolve of the 21st October, 1780, vol. 3, pages 538 and 539, the promise of half-pay for life reiterated.

Half-pay.—By resolve of the 17th January, 1781, vol. 3, page 569, certain "officers in the hospital department and medical staff" therein designated, and among them "regimental surgeons without exception who shall continue in service to the end of the war, or *be reduced before that time* as supernumeraries, (which was the case of Dr. Baird, as will be seen by the resolve of the 29th March, 1781,) promised half-pay for life.

Dissolution of the regiment of artificers.—By resolve of the 29th March, 1781, the regiment of artificers under Colonel Baldwin was dissolved, except two companies, and the officers not retained to command them were no longer considered in service. This resolve discharges in like terms the officers of the regiment of artillery artificers at Carlisle, except Captains Wiley and Jordan.

Depreciation.—By resolve of the 28th April, 1781, vol. 32, page 616, the depreciation promised by resolve of the 10th April, 1780, was specifically extended to the regiment of artificers commanded by Colonel Baldwin.

Half-pay to chaplains.—By resolve of the 8th May, 1781, vol. 3, page 617, depreciation and *half-pay* were allowed to chaplains "no longer continued in service," which is the precise phraseology used in discharging the regiment or corps of artificers and of artillery artificers.

Colonel Baldwin.—By resolve of the 26th April, 1782, vol. 4, page 19, Colonel Baldwin placed on the footing of officers of the line who retired under resolutions of the 3d and 21st October, 1780.

Incipient proceedings as to commutation.—Under date of the 25th February, 1783, vol. 4, page 166, the reasons which induced to the half-pay establishment are assigned: "Whereas, in consequence of the faithful services of the officers in the army of the United States, and of their great sufferings, not only on account of the deficiency of their pay, but on other accounts, Congress have by divers resolutions promised them half-pay for life." This resolve contains no discrimination as to the denomination of the officers, and there is nothing in the reasons stated which do not equally apply to the regiment of artificers.

Commutation.—By resolve of the 22d March, 1783, vol. 4, page 178, commutation allowed; and by the resolve of the same date, page 179, the benefits were extended to all officers of the hospital department designated in resolve of the 19th January, 1781, which expressly embraces regimental surgeons, of which Dr. Baird was one.

Commutation.—On the 16th May, 1788, vol. 4, page 222, it was "resolved that the commutation, in lieu of half-pay, as well to chaplains as to the officers of the hospital department and medical staff, shall be calculated by what they are respectively entitled to, agreeably to the resolutions of the 17th January and 8th May, 1781."

Commutation.—By proceedings of Congress of the 31st October, 1783, vol. 4, page 311, the Secretary of War reported Captains Patton's and Pendleton's companies, artificers, as having accepted the commutation. These were the two companies of the regiment of artificers under Colonel Baldwin, retained by the resolution of the 29th March, 1781, which, it is believed, were, after the death of Colonel Flower, (see proceedings of 2d May, 1781, vol. 3, page 616) united with the companies of Wiley and Jordan of the artillery artificers, and the whole placed under command of Captain Wiley. See resolve of the 3d May, 1782, dispensing with the services of Dr. A. McCoskey, as surgeon to Wiley's corps, and allowing him all the emoluments of reduced regimental surgeons; and further corroborated by the names of Captain Thomas Patton and Lieutenant Jonathan Wright, appearing in Colonel Baldwin's roll, herewith, No. 6, and in the corps of artillery of artificers also.

Captain Pendleton's company of artificers.—The Paymaster General directed by the resolve of the 3d of November, 1783, vol. 4, page 315, to settle accounts of Captain Pendleton for himself and company of artificers, in the same manner with the line of the army.

Land.—By memorandum from the bounty-land office of the War Department, herewith, No. 7, it appears that seventeen officers have obtained land from the United States; and that four of them, Captain *Thomas Patton*, and Lieutenants *Enos Grannis*, *Jonathan Wright*, and *Eleazer Little*, are found on the roll of the officers of artificers as they are arranged to do duty in the regiment, March 21st, 1780, made out in the handwriting of Colonel Baldwin, No. 6. And by memorandum herewith, No. 8, from the same office, that there are four officers of the artificers, of which Captain Daniel Pendleton is one, whose names are on the books of the War Office and who have not obtained land. It is conclusively shown by letters Nos. 9 and 10, of Paymaster King, herewith, that Captain Patton and Lieutenant Wright continued in service *with some men of the regiment of artificers* as late as November,

1781, and by resolves of the 30th of November, 1783, that Captain Pendleton's company was in service at the close of the war.

In fact, it is admitted by the Third Auditor that to Captains *Daniel Pendleton* and *Thomas Patton*, and Lieutenants *Peter Sears*, *Jonathan Wright*, and *John Thorp*, certificates for commutation were issued and delivered.

Commutation.—By an official list from the Treasury Department, it appears that Captain *Anthony Post* and Lieutenant *John M. Foght*, of the artillery artificers, and *Dr. McCoskey*, surgeon's mate, and Lieutenants *Stephen Clapp* and *Robert Williams*, the two last on Colonel Baldwin's roll, have obtained the benefits of the act of the 13th May, 1828, in consequence of having acquired a right to commutation under the resolves of the 3d and 21st of October, 1780, which designate the regiment of artificers. With these premises and authorities for guide, the objections which have been raised to the allowance of the several claims are to be encountered. First, then, as to the commutation. A report from the commissioner of army accounts, under date of the 25th August, 1786, of which a copy herewith, No. 11, adopts the discrimination between officers of the corps of artificers and "military officers," and bases the allowance of half-pay on "personal dangers," and the circumstance "that, by a long continuance in the military line, they may have lost those habits by which they formerly had been enabled to provide for themselves or family." This first objection rests on the assumption that the officers of the corps of artificers were not military officers in the sense used by the resolve of the 15th May, 1778, and that the reasons stated do not apply to them. With military men, all are considered as military officers who hold commissions either in the line, or in any of the departments of the army. An army is viewed by them as a body of which the nation is the soul; its ramifications the members and the officers, the arteries which impart life and activity. The officers of the corps, or regiment of artificers, were not, certainly, civil officers; and yet they were officers, and commissioned as a component part of the army, and declared, by the resolve organizing them, to be a part of the quotas of eighty battalions. Their duties were of a military character, and, in a military point of view, as well as by their organization, their service, and the manner in which they were discharged from service, not a shade of discrimination can be drawn between the duties nor the rights of this regiment and those of the corps of artillery artificers. It is true that they only rank in their own regiments, and had no right to command in the army. Such was the case with the artillery artificers, the corps of engineers, Hazen's regiment, Armand's and Pulaski's corps—in fact, with all the independent corps of the army; and it could not, from the scientific character of the corps of engineers, if not of the two corps of artificers, well have been otherwise; yet it has never been questioned whether their officers were of the military class; but the resolves of the 19th April and 15th May, 1778, taken in connexion, seem, on the contrary, to limit the half-pay establishment to the officers of the corps acting under the immediate control of Congress, and independent of State authorities, and "not annexed to any corps of established troops," is the language they

use. The regiments of artificers were organized under the orders of Quartermaster General Mifflin, by Major Gamaliel Painter, (see letter of Colonel J. Baldwin, herewith, No. 12, and dated the 8th day of August, 1781,) and its duties were to superintend and assist in building barracks, and to aid in the preservation of quartermaster's stores. The artillery artificers were raised by Colonel B. Flower, commissary general of military stores, and their duties were to repair and preserve the military equipments, take care of arms in arsenals and laboratories, and of ordnance and ordnance stores in the field. See vol. 2d, page 323. The duties of the one and the other originated in like emergency of service, and in the usage of all armies. They were strictly military. Their officers were not and could not be considered as of the civil staff of the army, some of which were precluded from the benefits of commutation, and even of those of land bounties, because not enumerated in the resolves promising these benefits. Not so with the corps of artificers, for, besides the broad language of the resolves of the 17th of April and 15th of May, 1778, the resolve of the 3d of October, 1780, by reducing the corps from *eleven* companies, of which it was composed when re-organized, on the 12th of November, 1779, to *eight*, most certainly gave to the officers which it reduced on the 1st January, 1781, the benefits of seven years' half-pay, in specie, and land also. It would conflict with equity, as well as with common sense, to refuse to officers of the same corps, who served longer, and until another reduction took place, the like benefits. The Continental Congress, who must be considered the best expounder of its own acts, has furnished the best commentary on this illiberal construction of its beneficent intentions by extending, on the 8th of May, 1781, the benefits of half-pay to chaplains, whose duties have as little of the military in them as as any other portion of the civil staff of the army. It is a complete refutation of any argument drawn from the use of the term "military officers," in the original and succeeding half-pay resolves; but besides the reasons for granting half-pay placed on the journals of Congress, on the 25th of February, 1783, the letters of General Washington, of the 29th January, 1778, and 11th October, 1780, vol. 4, pp. 211, 212, and 213, combined with the history of the country, clearly show that the half-pay establishment was adopted to prevent the dismemberment of the army, and that the system of commutation was but one expedient springing from the necessities of the nation and its inability to meet its engagements.

There, however, is another objection raised in the report of the commissioner growing out of the exception in the resolve of the 16th November, 1779, as to the officers of the corps of artificers. This exception, however, was evidently made because officers not "annexed to any corps of established troops," (meaning State lines on continental establishment,) and not credited to the States, could only claim the benefits of the resolves of the 17th April and 15th May, 1778, from the United States, and because, with a few exceptions, the States had then not adopted the half-pay system. This view is corroborated by the subsequent assignment of the regiment of artificers to the States: of Pennsylvania, by the resolve of the 3d October, 1780,

and by the decision of Judge Coulter, of the Virginia court of appeals, in the case of Lilly. See Leigh's Reports, vol. 1, pp. 516 and 525. It is believed that up to the 1st August, 1780, the States paid the troops of their own lines. See proceedings of the 7th May, 1783, vol. 4, p. 220. This view is also sustained by the officers of the regiment being placed on the footing of "officers of the line" (that is to say, of officers entitled to promotion throughout the line of the Continental army,) as to clothing and subsistence, by the uniform practice of the government to extend to officers of the corps of artillery artificers who stand on precisely the same footing, all the benefits promised by the resolves of the 3d and 21st October, 1786, and by the organization of the regiment and the resolves of the 3d October, 1780, declaring it to be a portion of the eighty battalions, and a component part of the regular army, whose claim to these benefits cannot be disputed. In fact it is distinctly recognised by the last-mentioned resolve. There are certainly no reasons for excluding the independent or Congress corps of the army from the benefits of half-pay or commutation—none, at all events, that have been advanced—which do not, with more force, apply to chaplains. None are to be found in the mere fact that they did not belong to the *line* of the army, for such is the situation in all armies of their scientific corps. What, then, creates the discrimination as to the officers of the corps of artificers which has been drawn. Not that their service was not perilous, because they would have certainly been liable to have been called to the works of circumvallation at Yorktown; and if the government did not exercise its right to make their service perilous, it was no fault of theirs. Not that they did not suffer losses and privations, as stated in proceedings of Congress of the 25th February, 1783. The first decision against these claims to half-pay and commutation had its origin in error and misconception, which it is humbly believed have been perpetuated by a failure to investigate the facts and principles which should have governed. All the subsequent decisions have been based on the first, but the same reasons have not always been assigned. The arguments of the commissioner of army accounts have been received; those which have from time to time been argued with a view to sustain them, deserve a passing notice. Disregarding the fact that the corps of artificers was like the other independent corps, officered from the various States, and were credited to their respective quotas, it has been supposed, to avoid the conclusion which must follow the fact of any of them having received the commutation or land-bounty, that they must have obtained such allowances in consequence of their having been in the State lines—a supposition to which are opposed the resolves which assign the artificers to the quotas of the States from whence they entered the service; and the fact that most of them, like Pendleton, Patton, King, Sears, Wright, and Thorp, were not attached to any other corps during the war than those of the artificers or artillery artificers. The inference has been drawn that because the agent of the artificers received "credit for the commutation certificates of Captain Patton and the subalterns of said Patton's company, as having been returned by him," they were required to return them in consequence of a mistake

in issuing them, and the same forced presumption has been adopted as to Captain D. Pendleton, but no such ground existed for surmise against Colonel Jeduthan Baldwin. Doubts have been started whether he is the same officer who commanded the corps of artificers; but before this doubt should have any weight to support a tissue of suppositions, it should be shown that there was another officer of the same rank and peculiar name in the service. By the resolves of the 3d of November, 1783, (volume 4, page 313, of the journals of the old Congress, of the 27th May, 1785, volume 4, page 528, and of the 11th October, 1785, volume 4, page 598,) commutation and final settlement certificates not called for or delivered to the officers were required to be returned by the regimental and other agents, and deposited for their (the officers') benefit, as the supreme executive of the States to which the respective agents belong shall direct. Two probable reasons, other than that presumed as to Captain Pendleton, are found in the legislation of Congress, first in the second section of the act of the 21st February, 1795, (vol. 2 Laws of the United States, page 471,) or that he did not take the oath required by the resolve of the 15th May, 1778; and if regard is had to the resolve of the 3d November, 1783, placing his company on the footing of "the line of the army," the presumption as to any mistake fails. But whatever decision may have prevailed adverse to the officers of the regiment generally, it cannot be applied to the surgeon, unless in violation of the rule of law which, as to benefits, denies the right to restrain the operation of words conveying a grant. Regimental surgeons, situated as Drs. Baird and McCoskey, were distinctly and specifically embraced by the resolves of the 3d October, 1780, 17th January, 1781, and 22d March, 1783. They are so brought into the situation which the commissioner admits would entitle them to half-pay or commutation. They are expressly mentioned. They have "a subsequent promise equally pointed and express," and indeed more so than the terms of the exception which have been relied on. Were it not so, Dr. Baird could neither in equity, justice, nor law be precluded. He was in the hospital department when the first promise was made, and acquired a vested right, which the act of the government, in transferring him to a corps assumed to have no claim to half-pay or commutation, could not destroy. The principles of the resolution of the 17th January, 1781, as to his reduction or discharge from service, would equally apply, whether he is to be considered as leaving the service when he left the hospital department, or when the regiment of artificers were dissolved. Any other rule would have placed it in the power of the government to have evaded, previous to such resolves its half-pay engagements, with all the officers of the army who, like Dr. Baird, had served more than four years of the most trying and afflicting period of the war. It would be to wrest from long and meritorious services their claim to equity, to snatch from justice her scales, from law her attributes. The act of leaving the service was in neither case his act. If half-pay under its various modifications depended on service to the close of the war only, what application is to be made of the terms "from the time of their reduction," used in the resolve of October, 1780? Who were retiring officers if Dr. Baird was not

either as mate in the general hospital or as surgeon of artificers? Dr. McCoskey did not serve to the close of the war; and yet, although belonging to the corps of retained artificers, he received commutation as surgeon. Would the Secretary of War, who was himself a distinguished officer of the Revolution, have reported Captains Patten and Pendleton and their subalterns to Congress, on the 31st October, 1783, if he had not considered them entitled to commutation? The accompanying No. 13, from Dr. Rogers, shows the view which, in February, 1781, was taken of the resolve of the 17th January previous.

As to the land, two objections have been raised: the one that Dr. Baird did not serve to the close of the war; and the other, that there was no promise made to him: first, because the construction has ever prevailed that no officers are entitled, who are not specifically mentioned; and second, because the promise made on the 30th September, 1780, to regimental surgeons, did not apply to the surgeon of the corps of artificers or to hospital mates who were not then in service. Either objection would restrict a benefit or positive grant. Adopting the construction which has prevailed, and the resolve of the 30th September, 1780, is but an extension of the terms of that of the 15th September, 1776, until discharged by Congress; and as to the promise, no words can be more comprehensive and express than those of the resolve of September, 1780. If it must be admitted, that if the rule of construction which this resolve seems to sanction must govern, and that the term *officers* used in the resolve of 16th September, 1776, does not embrace surgeons, then it must follow that the same term employed in the resolve organizing the corps of artificers, and in that making the exception as to half-pay, does not include the surgeon of that corps, and that the irresistible consequence is, that he is entitled to the full benefit of the resolve of September, 1780. Any other conclusion would involve a contradiction and absurdity, and be at war with the resolve of the 16th November, 1779. What is there in the duties of a surgeon to this ill-fated corps, which makes their character dissimilar to those of other "regimental surgeons" of the army? There is nothing in all the proceedings of Congress to create a discrimination against them. That which has been made is an unauthorized implication against express provisions in his favor. Even the exception as to half-pay, on which so much stress has been laid, and under the color of which so much injustice has been done to meritorious "military officers commissioned by Congress," if it is to be considered preclusive in its character, enforces the obligation to grant the land, on the well known principle that when exceptions are made, all that is not excepted is embraced; but in this respect the resolve of the 16th November, 1779, is express in extending to the corps of artificers all the benefits provided for officers and soldiers in the *line* of their quotas of the continental battalions.

JOS. WATSON,
Solicitor of Claims.

To the honorable the Senate and House of Representatives of the United States in Congress assembled:

The petition of Thomas H. Baird, of Washington, Pennsylvania, administrator, and one of the heirs of Doctor Absalom Baird, late a surgeon in the army of the Revolution, respectfully represents:

That your petitioner's father, the said Doctor Absalom Baird, entered at an early period the revolutionary army, and in 1776 was appointed surgeon's mate in the hospital department, from whence he was removed to the corps of artificers in March, 1780, and held the office of surgeon in the regiment commanded by Colonel Baldwin, in said corps, until the army was reduced; that while thus in the service of the country, he became entitled to bounty land and commutation of half-pay, under the several resolves of Congress; that the said Doctor Baird, in his lifetime, never received the said bounty land or commutation, nor has your petitioner, since his death, received the same, or any part thereof; that your petitioner firmly believes that he, and the other heirs of the said Doctor Baird, (whom he represents,) are entitled to have the said bounty land and commutation upon principles of law and equity, and humbly prays that their claim may be allowed, &c.

Your petitioner begs leave further to state, that there are considerations which strongly urge him to the present appeal to the justice of his country, and the good feelings of your honorable bodies. Some years ago, your petitioner, with his brothers, George Baird and Wm. Baird, became indebted to the United States by taking an assignment of a deposite receipt of the Bank of Washington, Pennsylvania, and giving their bond for the amount. Your petitioner at the time was owner of an extensive establishment, consisting of a large steam-mill, saw-mill, fulling-mill, several dwelling-houses, &c., &c. The whole of these buildings, except the principal mill, were destroyed by *fire*, a few months after said debt was contracted. Your petitioner endeavored subsequently to sustain himself under this heavy calamity, and to repair and improve the still valuable property that remained. His best efforts, however, have been defeated. On the night of the 19th May last, a fire originated in the engine-house and shop in the rear of his mill, either by accident or by the act of an incendiary, and the *whole property was burnt* to the ground.

Your petitioner, by these successive disasters, has lost nearly the whole of his estate, estimated to have cost between thirty and forty thousand dollars. He is rendered unable to pay the debt for which he is responsible to the government. His main resource is the stipulated compensation for the revolutionary toils and sufferings of his father, who, after a life spent in the public service, left it as his *only* legacy to his children. Your petitioner has entire confidence in the justice of the claim, and considering it to be the *excellence* of our form of government that it is administered in perfect regard to those principles of morality and good feeling which pervade the mass of the people, he appeals with more assured trust to their representatives.

These suggestions in relation to your petitioner's peculiar circum-

stances, it is hoped will not be thought impertinent or irrelevant. A generous mind is not the less accessible to the demands of *justice* because they are seconded by *misfortune*.

It is conceived that the claim now presented has never yet been decided upon its merits, but is still open for examination and adjustment. If it is allowed, your petitioner will be able to extinguish his liability to the government; if it is refused, or withheld, he must continue in a state of servitude—most galling to an honorable mind—and at least three large families will be reduced to poverty.

Your petitioner will pray, &c.

TH. H. BAIRD,

For himself, and as attorney in fact for John Baird, Geo. Baird, Wm. Baird, and Sarah Hadu, (late Baird,) children and heirs-at-law of Dr. A. Baird, deceased.

Dr. Absalom Baird entered into the revolutionary service at a very early period of the war, and some time in 1776 was appointed mate in the general military hospitals. This fact is established, it is conceived, from its being stated in a petition presented by him to Congress in October, 1781, (marked A,) and recognised by an endorsement of the officers of the government referring him "*to the director or purveyors* of the *hospitals* for *his claim in that department.*" This, done at the time when his situation and services must have been well known, it is thought would be sufficient. It is, however, further proved by the certificate of Dr. Shippen, referred to in said petition, and enclosed now within it; by a series of orders from Dr. Fallon, who was senior physician and surgeon of the general hospitals—all enclosed together and marked B; by a continued correspondence with Drs. Rogers, Thompson, Smith, and other officers, (in envelope marked C;) an order from Dr. McKnight, surgeon general of the hospitals, marked D; oaths of allegiance taken by Dr. Baird in 1778 before Henry Dehuff, esq., in which it is stated that he was *surgeon's mate of general hospitals*, marked E; and also by an account against the State of Pennsylvania for depreciation, in which he charges for services as surgeon's mate from December, 1776, to March, 1780. This account goes no farther back, because the depreciation of paper money only began about that time.

It is thought that Dr. Baird, by his continued faithful services during this period of difficulty, danger, and privation, brought himself within the *spirit*, at least, of all the resolves of Congress which promised future provision to those who hazarded everything in the doubtful struggle. By an examination of the correspondence referred to, it will be found that the officers, during that eventful period, endured sufferings and hardships to a great degree; and it will appear that, in the case of Dr. Baird, he was in part furnished with necessaries by his mother, not being able to obtain pay from the government to subsist upon. So great were his difficulties, indeed, that he at one time thought of accepting an offer of a situation on board a vessel of war, but was prevented by a sense of honor and a zeal for the cause

in which he was engaged. Early in 1780 the regiments of artificers were officered, and Dr. Baird was earnestly urged to accept the appointment of surgeon, (in letters marked G.) He was appointed to that situation on the 20th March, 1780, and continued in the service until the regiment was reduced in May, 1781. (See papers enclosed in envelope H.) The *equity* and *justice* of the claim arise out of the fact of his early and continued services, and extraordinary hardships and sufferings in the hospital department. Congress was fully sensible of the merits of the medical department, and by several resolutions promised to all the surgeons and mates bounty land and half-pay. Indeed, the resolution of September, 1776, included them, by the general terms of it, and the subsequent resolutions of 1780 only defined and adjusted the bounty. Had Dr. Baird continued in the *hospital service*, no one would ever have questioned his right to half-pay and land under those resolves. Ought the circumstance of his being removed to another situation in the public service, at the solicitation of government officers, and for the advantage of the common cause, defeat or weaken his claim? Ought it not rather to strengthen it? He had, from 1776 to 1780, performed the services and endured the sufferings which Congress declared by these resolutions entitled to the bounty and grateful remembrance of the nation. He was fully within the scope and object of them. The right was *vested*—the claim charged upon the justice of the country; and no act of his, unless amounting to a *relinquishment* or a *forfeiture* for dereliction of duty, ought to bar. There was nothing of the kind in his case. He never abandoned, nor did he ever *forfeit*. He continued faithfully to serve the country until dismissed. If there was no other resolution than those of 1776 and 1780, it is conceived that Dr. Baird was fairly entitled to half-pay and land, on the ground that he had performed the very services which were the consideration of the bounty or compensation. Many others, who were not engaged for so long a period, have actually received the commutation. Upon the same principle that Congress adopted, in the case of Gen. Lafayette, at the last session, it is confidently hoped that the present claim will be sustained, and that no mere *technical* objection will be introduced to defeat a *vested right*, and one which appeals strongly to the justice and generous feeling of the country. But it is not intended to rely upon the intrinsic merit and equity arising out of the previous services of Dr. Baird; it is believed that a *law* of the land supports the personal application. If he had never been in the public service prior to his appointment in the artificers, the claim, it is thought, would be incontrovertible. The resolution of January, 1781, is so broad and general in its terms as to leave no room for any restraining construction. It embraces "*all*" officers of the hospital or medical staff, and *all* regimental surgeons, without *any exception*. Upon what ground, then, does the objection rest? Singly on this—that the resolutions of Congress for raising the artificers promise every other advantage except that of *half-pay* to the "OFFICERS." Nothing is said about the surgeons. But if it is supposed that they were included in the *general* expression, the same rule of construction applied to the resolution of September, 1776, will also embrace them, and Dr. Baird would there-

fore be entitled under *that*. Granting, however, that the surgeons of the artificers were excluded, under the term "*officers*," from the half-pay allowance, then come in the resolutions of January, 1781, to supply the remedy; and it might be urged that such was the object of it. The different resolutions of 1776 and 1780 had *previously* provided *generally* for the surgeons and mates; and it is difficult to discover the design and intention of that of January, 1781, unless it was to make a similar provision for those of the *artificers*, whose right might have been questionable, perhaps, under the general expression of the resolution for raising that corps. The language of it is so general that it certainly *may* include them. By what rule, then, shall they be denied? Will Congress be disposed to *restrain* the operation of words conveying a grant? The proper rule is rather to *enlarge* than *restrict* where a benefit is clearly intended. This resolution was designed to secure a compensatory provision. But to whom? To *all* the surgeons except the artificers? It does not say so; and being subsequent to the resolution for raising the corps, which denied half-pay, is not restrained by it, and consequently embraces, as its words express, ALL.

Will Congress limit the ordinary import of words to defeat a claim for revolutionary services? At the time when the generous sentiment of the nation calls for remuneration to the aged veterans of the revolutionary struggle, and when the universal burst of enthusiastic acclamation which hailed "the nation's guest" has scarcely ceased to ring in our ears, shall a cold and calculating consideration be given to "*words and phrases*," in order to discover some latent interpretation which may render the claim of an old soldier invalid?

But again, will Congress *add* an *exception* which the resolution does not express or import, to exclude from the bounty promised a man who, from principle alone, took up arms as a volunteer in the cause of that freedom which we all now enjoy—who served faithfully afterwards as a hospital surgeon for more than four years, and more than one year as an artificer surgeon, during all which time his necessities were principally supplied from his own resources, and who was even denied for several years his pay, reduced by depreciation to a paltry pittance? A reference to the papers will show the equity of this case and the truth of the suggestions here made. The pay that Dr. Baird received was *nominal* merely. He was compelled to apply to Congress for the balance due him in the hospital service, (see A,) and was again turned back. He was assured that Pennsylvania would make up his depreciation, (Col. King's letter in I,) which, however, was refused; and of his nominal pay, amounting to $1,891 60, he only realized $333 35, for a balance of which he had to take the paymaster's note. (See account against Pennsylvania for depreciation, in I.) Whether anything was received afterwards is not known. If it was, it did not compensate for the delay and expense of repeated applications.

This claim rests, then, 1st upon the resolution of September, 1776, giving bounty-lands and half-pay to the OFFICERS severally. The fact of Dr. Baird's services in the hospital being proved, it is conceived he is within the scope and design of this resolution, and was entitled to

the benefits of it according to the ratio adjusted in the subsequent resolutions of 1780. (Vol. 1 U. S. Laws, Weightman's edition, 567.) He was one of the very persons intended to be provided for, and he faithfully performed the condition precedent.

2d. But if it is said that the general expression of the resolution of September, 1776, did not include surgeons, the same rule of construction ought to be applied to the resolutions for raising the artificers; and if so, the surgeons of those regiments were not excluded by it from the bounty and half-pay before promised *generally* to the medical department.

3d. Admitting, however, that the surgeons of artificers were excluded, by the terms of the resolution for raising that corps, from all participation in the half-pay and bounty, (which is denied, and for which there could be no reason of justice or policy,) yet still the resolution of January 7, 1781—a subsequent act, and intended for the very object, as may be urged—comes in, and by general and explicit terms secures to them the compensation. There might have been some propriety in refusing half-pay, &c. to officers called into service in a new corps at the close of the war, as the artificers might be considered, but surely there could be neither justice nor reason for denying it to those who had been engaged during the war, and who were merely transferred from other situations to their regiments. Such was Dr. Baird's case. He had served from 1776 to that period; was induced, by the solicitation of his seniors, to accept of the place of surgeon in Col. Baldwin's regiment, and did it under the expectation that they belonged to the line, and would be provided for as the other surgeons were. It was the understanding at the time that the resolution of January 7, 1781, was intended to embrace them; and Dr. Rogers, his friend and senior, writes to him on 9th February following, that "*Congress had put the surgeons on the half-pay list, and given them the half-pay of a captain.*" (See letter enclosed in envelope K.) The Congress of 1782 (composed, perhaps, of the same men as the former) so considered it; for when the accountant officers refused, on the authority of the resolution for raising the artificers, to allow Dr. McCoskey his commutation, a resolution was at once passed in his favor. Here was a construction given to these several resolutions *at the very time*, and by the men who made them, and who knew perfectly the design and object of them. Ought not this to be conclusive? It would be so, certainly, if it was not that the present claim has been so long delayed. But is the *delay* of justice to be urged as a reason why it should not be granted? Because Congress heretofore have not allowed the claim, is not to be urged as an argument against it. If it is well founded, this is rather a strong motive now that it should be promptly allowed.

But in truth, the claim has never been presented with the force it merits. Dr. Baird moved to the western country in 1786, and at that time had not been able to receive even the paltry pittance of pay which the depreciation left him. Long after this, as can be shown by a correspondence with his mother and others, he endeavored to obtain it from the paymaster, without success. Congress had refused him relief even as to that. He left his papers with Dr. Rogers, in

order to prosecute his claim for commutation. (See his letter in K, of February, 1787.) They were handed from one member of Congress to another, without anything being done, until many of them were lost. Indeed none of them can now be found, and the claim is supported by the papers referred to, picked up from many others of a similar kind. The *commission* of Dr. Baird, the certificate of Col. Baldwin, and many other documents, were left with Col. Bayard, a member of Congress, as appears by a memorandum on one of the petitions, and cannot now be found. From time to time petitions have been presented, so as to keep the claim alive, but no full examination has ever been given to it, as is believed. It has been refused on entirely different grounds at different times. At first, it was denied because the artificers, it was said, were excluded from the half-pay bounty; again, because there was no proof that he was in the service at all; and now it is suggested as a reason why it should not be allowed, that he did not continue in service to the close of the war. This will not be considered by Congress as any cause for rejecting the claim. Dr. Baird continued faithfully in the service of his country from early in 1776, until he was discharged by the dissolution of his regiment in March, 1781. This was the close of the war as to him. He could not serve after he was dismissed. He never left the army until his services were no longer required. What more could he do? But the resolutions contemplate those who shall serve to the end of the war, and those *who shall be reduced before that time as supernumeraries.* And this accords with justice and common sense. Would it comport with the honor of a government to engage men in the public service in perilous times—hold out the promise of reward if they shall persevere to the end, and when it draws near to a close, dismiss them, and avoid the contract of bounty and remuneration by saying, "You did not continue until the war was done?" But it would be insulting the good sense and justice of Congress to suppose that they could reject the claim on this pretext.

On every view, then, which can be taken of this claim, it is conceived that it stands on a foundation that cannot be shaken. It has *equity*, *justice* and *law* in support of it. *Equity*, from the long and meritorious services of Dr. Baird; *justice*, from the obligation the people are under to compensate him; and *law*, because the country, by a public act, had promised to do so.

It is known and admitted that sometimes claims are presented against the government that are frivolous and without warrant; hence the officers are compelled to be astute and severe in their examinations. In consequence of this it is feared that many honest and just rights have been disregarded. The poor veteran of the war has often shrunk from the difficulties he has had to encounter in getting his claims allowed, and contented himself in poverty and silence, rather than be exposed to repulse, or meet the unforeseen objections that were thrown in his way. (See the correspondence referred to.) The former fiscal embarrassments of the nation formed another reason why such claims as the present were unfavorably received. That time is past: our country is prosperous—our treasury full: the people are happy, and

they are generous and grateful. The general voice demands that the just claims of their revolutionary patriots should be answered.

But the persons who present the application in this case ask nothing from the *bounty* of the government. If they are not legally entitled, according to a just and reasonable construction of the resolutions of Congress, to the half-pay and lands promised, they do not wish a gratuity. They conscientiously believe that the claim is founded in right and law. It has been long withheld. Had Dr. Baird received his commutation of half-pay at any time before his death, his estate would have been preserved from ruin, and a large family would not have been left destitute.

HOUSE OF REPRESENTATIVES.—*January* 5, 1836.

The Committee on Revolutionary Claims, to which was referred the petition of Thomas H. Baird, report:

That a bill was reported for the relief of the petitioner, on the 2d of March, 1835, acompanied by a report, to which the committee refer, and make it a part of this report. This committee concur with the former committee, and report a bill accordingly.

MARCH 2, 1835.

The Committee on Revolutionary Claims, to which the petition of Thomas H. Baird was referred, report:

That the petitioner states that, in the early part of the year 1776, his father, Absalom Baird, was appointed a mate in the general hospital of the continental army, and continued to serve in that capacity until the spring of 1780, when he was transferred to the corps of artificers, under Colonel J. Baldwin, in the capacity of surgeon, and continued to serve in such corps, and as surgeon, until it was dissolved, and, in part, discharged by Congress, on the 29th of March, 1781, when he became a retiring officer. It appears, by the journals of Congress, that, on the 12th of November, 1779, it was resolved that the eleven companies of artificers raised by the quartermaster-general be reformed, and incorporated, and arranged, in such manner as the commander-in-chief shall deem proper; and that the officers and men of said corps be considered as part of the quotas of the eighty battalions, as apportioned on the several States to which they respectively belong. On the 16th of the same month it was resolved, that it be recommended to the several States to allow the corps of artificers, established by Congress, all the benefits provided for officers and soldiers in the line of their quotas of the continental battalions, except the half-pay. The half-pay here referred to was granted for seven years, by the resolution of the 15th May, 1778, and by the subsequent resolution of

August 11, 1779, was extended to continue for life. In the reorganization of the army, on the 3d October, 1780, a regiment of artificers was retained, to consist of eight companies, and each company to consist of sixty non-commissioned officers and privates. On the 29th March, 1781, the regiment of artificers, commanded by Colonel Baldwin, was dissolved. The resolution of January 17, 1781, granted half-pay for life to the officers in the hospital department and medical staff, who should continue in service to the end of the war, or be reduced before that time as supernumeries. Dr. Absalom Baird was, in the opinion of the committee, entitled to claim the benefit of this provision. He was an officer of the medical staff at the passage of this resolution, in a regiment on continental establishment, which regiment was subsequently reduced by Congress. The exclusion of the officers of the corps of artificers from the benefit of half-pay, by the resolution of the 16th November, 1779, is not contained in the resolutions of 21st October, 1780, and of January 17, 1781. Colonel Baldwin, who commanded this regiment, and other officers belonging to it, were allowed the same emoluments received by officers of the line, who retired under the resolutions of Congress of the 3d and 21st of October, 1780. No reason can exist for a distinction between those officers and the surgeon of the same regiment, as Congress, by the resolution of 17th January, 1781, extended the benefit of half-pay to officers in the hospital department and medical staff. The committee, therefore, report a bill for the relief of the heirs of Dr. Baird.

OFFICE HOUSE OF REPRESENTATIVES U. S.,
March 4, 1856.

SIR: I transmit herewith, under the resolution of the House of Representatives of the 21st of February, 1856, papers in the case of the heirs of Absalom Baird, deceased, in addition to those sent on the 29th ultimo.

I am, very respectfully, your obedient servant,

WM. CULLOM,
Clerk House of Representatives U. S.

S. H. HUNTINGTON, Esq.,
Chief Clerk Court of Claims.

To the honorable the Senate and House of Representatives of the United States in Congress assembled:

The petition of Thomas H. Baird, a citizen of the county of Washington, in the Commonwealth of Pennsylvania, in behalf of himself and the other heirs of Dr. Absalom Baird, deceased, most respectfully represents:

That your petitioner's said father served during the revolutionary war as surgeon of Col. Baldwin's regiment of artificers, and thereby

became entitled to half-pay and bounty land granted by the several resolutions of Congress; that after the said Dr. Baird, in his life-time, and your petitioner since his death, had made repeated efforts to obtain the allowance of this just claim, it was at length determined upon full examination by a committee, to whom the case was referred, "*that Dr. Absalom Baird was, in the opinion of the committee, entitled to the benefit of the provision*" of the *resolution of Congress of the 17th of January*, 1781, *extending the grant of half-pay for life to the officers of the hospital department and medical staff*. That accordingly a bill was reported and passed, directing "the proper accounting officers of the treasury" to "settle the account of Dr. Absalom Baird, &c., and to allow his legal representatives compensation equal to five years' full-pay of a captain of infantry, in the service of the United States, on continental establishment, *without interest*, which five years' full-pay is the commutation for his half-pay for life, &c."

Your petitioner under this act has received twenty-four hundred dollars; but conceiving that a considerable sum is still due of the claim, upon the principles and facts recognised by the honorable committee, in their report already referred to, he comes before Congress for further relief.

He begs leave to observe that this application was not for a gratuitous remuneration, but rested wholly upon the ground of a governmental contract. Dr. Absalom Baird, on the 29th of March, 1781, (the day on which his regiment was dissolved,) became entitled, by a law of the land, to receive the commutation of his half-pay for life. He had a right to be placed on the same footing with other officers of his corps. This was denied; although, as the committee justly remark, "*no reason can exist for a distinction between those officers and the surgeon of the same regiment.*"

Had Dr. Baird obtained promptly, when he left the service, the amount which is now admitted to have been due to him from the country, it would have been of great importance to his success in life. He had to struggle with difficulties in establishing himself, while his brother officers received their money, and they and their heirs have enjoyed the benefits of it ever since.

Your petitioner trusts with confidence to the principle asserted by the honorable committee, in the part of their report above quoted. Justice demands that *equal measure* be granted to all who stand in similar circumstances. When his regiment was reduced, Dr. Baird became at once entitled, under the resolutions of Congress, to the commutation of his half-pay for life. This was withheld, (although frequently and earnestly solicited,) and your petitioner humbly thinks that *interest* from that time to the present is the legal (though not adequate) compensation.

The only ground, he conceives, upon which such just claim can be resisted, is a failure or delay in the party entitled in presenting his application. This rule, however equitable it might be between private citizens, does not comport with the dignity of a great nation. When justice is the basis of governmental policy, lapse of time bars no right.

Your petitioner, however, avers that in this case it cannot fairly be

applied, because the claim was presented by Dr. Baird in his lifetime to the proper officers, as soon as the resolution was passed for dissolving his regiment; when refused by them, it was by petitioner laid before Congress, and was renewed repeatedly until 1805, the year of his death. From that period it has been constantly urged by your petitioner, until finally acted upon. Evidence of this continual claim he begs leave to furnish from the records of Congress; and he prays that an act may be passed allowing the commutation of Dr. Baird's half-pay, with interest thereon, from the 29th of March, 1781, to the 23d of June, 1836, (the date of the law for the relief of his legal representatives;) and after deducting the amount given by that bill, ($2,400,) the balance with interest to this date.

Your petitioner respectfully suggests that this is the settled measure of remuneration, when money is due and payment is withheld. He trusts, therefore, that the justice of the country, as administered by your honorable bodies, will extend to him this relief.

And he will, &c.

THOS. H. BAIRD,
Administrator, &c., of Dr. Absalom Baird, deceased.

To the honorable the Senate and House of Representatives of the United States in Congress assembled:

The petition of Thomas H. Baird, a citizen of the county of Washington, in the Commonwealth of Pennsylvania, legal administrator of the estate of Doctor Absalom Baird, deceased, late of the same place, most respectfully represents:

That your petitioner's said father served in the war of the Revolution, as surgeon of Colonel Baldwin's regiment of artificers, and became entitled to half-pay and bounty land granted by several resolutions of Congress. That after he had, in his lifetime, and your petitioner since his death, made repeated efforts to obtain the allowance of this just claim, it was at length determined by a committee, to whom the case was referred, that "*Dr. Absalom Baird was entitled to the benefits of the provision*" *of the resolution of Congress of the 17th January*, 1781, *extending the grant of half-pay for life to the officers of the hospital department and medical staff;* that a bill was accordingly reported, and subsequently passed, directing "the proper accounting officers of the treasury" "to settle the account of Doctor Absalom Baird, &c; and to allow his legal representatives compensation equal to five years' full pay of a captain of infantry in the service of the United States, on continental establishment, *without interest;* which five years' full pay is the commutation for his half-pay for life, &c."

Your petitioner, under this act, has received twenty-four hundred dollars; but conceiving that a considerable sum is still due of the claim, upon the principles and facts recognised by the committee in their report already referred to, he comes before your honorable bodies for further relief.

He begs leave to observe that this application, originally, was not for a *gratuitous remuneration*, but rested wholly upon the ground of a governmental contract. Doctor Absalom Baird, on the 29th March, 1781, (the day his regiment was dissolved,) became entitled, by a law of the land, to receive the commutation of his half-pay for life. *He had a right to be placed on the same footing with other officers of his corps.* This was denied; although, as the committee justly remark, "*no reason can exist for a difference or distinction between those officers and the surgeon of the same regiment.*" Had Doctor Baird obtained, when he was discharged from the service, the amount which is now admitted to have been due to him from the country, it would have been of great importance to his success in life. He had to struggle with difficulties in establishing himself in business, while his brother officers got their money, and they and their heirs have enjoyed the benefits and advantages of so much capital ever since.

Your petitioner trusts with confidence to the principle asserted by the honorable committee, in the passage of their report above quoted: *justice demands that equal measure be given to all who stand in similar circumstances.* When his regiment was dissolved, Doctor Baird ought, of right, to have received the commutation of his half-pay for life, &c. This was withheld or denied; and interest, from that time to the present, is the legal (though by no means the adequate) compensation, as your petitioner humbly thinks. The government has in repeated instances admitted its equitable obligation to make such recompense for money withheld. The only ground upon which such just claim can, with propriety, be resisted, is the supposed *laches* or failure to make timely application for its allowance. This rule, however reasonable it might be between private citizens, does not comport with the dignity of a great and prosperous nation. But your petitioner avers that in this case the facts exclude its consideration, because the claim was presented by Doctor Baird, in his lifetime, to the proper accounting and disbursing officers of the government, as soon as the resolution was passed for dissolving his regiment. When payment was refused by them, it was, by petition, laid before Congress; and was repeatedly renewed up to the time of his death, in 1805. Since then, it has been constantly urged by your petitioner, until it was finally acted upon as already stated. Evidence of this continued claim your petitioner begs leave to exhibit from the archives and records of Congress; and he humbly and respectfully prays that an act may be passed allowing the commutation of Doctor Baird's half-pay, with interest thereon, from the 29th March, 1781, to the 23d June, 1836, (the date of the law for the relief of his legal representatives;) and after crediting the amount given under that bill, ($2,400,) the balance with interest to this date; and he will, &c.

THOMAS H. BAIRD,
Administrator of the estate of Dr. Baird.

DECEMBER 12, 1851.

To the honorable the Senate and House of Representatives of the United States in Congress assembled:

The petition of Thomas H. Baird, of the county of Washington, in the Commonwealth of Pennsylvania, in behalf of himself and the other heirs of Dr. Absalom Baird, deceased, most respectfully represents:

That your petitioner's said father served during the revolutionary war as surgeon of Col. Baldwin's regiment of artificers, and became entitled, under the resolutions of Congress, *to half-pay for life.* That after he had, in his lifetime, and your petitioner since his death, made repeated efforts to obtain the allowance of this just claim, it was at length (in June, 1836) determined, upon full examination by a committee of Congress, to whom the case was referred, "*that Dr. Absalom Baird was entitled to the benefit of the provision of the resolution of Congress of the 17th of January*, 1781, *extending the grant of half-pay for life to the officers of the hospital department and medical staff.*" That a bill was reported and passed, directing "the proper accounting officers of the treasury" to "settle the account of Dr. Absalom Baird, &c., and to allow his legal representatives compensation equal to five years' full pay of a captain of infantry in the service of the United States on continental establishment, *without interest;* which five years' full pay is the *commutation* for his half-pay for life, &c."

Your petitioner has received, under this act, twenty-four hundred dollars; but conceiving that a considerable sum is still due of the claim, upon the principles and facts recognised by the committee in their report already referred to, he comes before your honorable body for further relief.

He begs leave to observe that this application was not for a gratuitous remuneration, but rested wholly upon the ground of a governmental contract. Dr. Absalom Baird, on the 29th of March, 1781, (the day on which his regiment was dissolved) became entitled, by a law of the land, to receive *half-pay during his life*, and, by subsequent resolutions of Congress, in lieu of the grant, *five years' full pay* was allowed as *commutation.* This in justice and fairness he ought to have received. He had a right to be placed on the same footing with other officers of his corps. This was denied, although, as the committee remark, "*no reason can exist for a distinction between the officers and the surgeon of the same regiment.*" Had Dr. Baird obtained, when he left the service, the amount which it is now admitted was due to him from the country, it would have been of great importance to his success in life. He had to struggle with difficulties in establishing himself, while his brother officers received their money, and they and their heirs have enjoyed the benefits of it ever since. Even as late as 1836, after long years of solicitation, if his heirs had been allowed the *commutation with interest*, it would have been of more value to them than twice the sum could be now, and they would have been satisfied. The amount received does not compensate them for the time, trouble and expense of the protracted pursuit.

Your petitioner trusts with confidence to the principle asserted by

the honorable committee, in the passage of their report which is above quoted. Justice demands that equal measure be granted to all who stand in similar circumstances. Dr. Baird was entitled by law *to half-pay during his life.* He demanded this (or its commutation) from the proper accounting officers, and was denied. By his petition subsequently to Congress, he prayed "*that the allowance of half-pay and other emoluments granted to the medical staff in the service of the United States during the late war might be extended to him.*" This and other similar applications were without avail. He died without having received any portion of what was due to him. Your petitioner, as his representative, persisted in renewed solicitations, until at length the act of 1836 gave him a small part of the just amount.

He appears again before your honorable body and asks for full and fair relief; upon principles of equity, and by the law of the land, he thinks he ought to receive the *half-pay* due to his said father (with *interest* on the deferred payments) to the time of his death. He respectfully urges also that *interest*, according to the settled rule of computation, ought to be allowed from that time to the present, as the legal (though not adequate) compensation for the delay.

The only ground upon which such just claim can be resisted with propriety is, some supposed *laches* or failure to make application for its allowance. This rule, he begs leave to say, though it might be equitable between private citizens, does not comport with the dignity of a great nation. But, at all events, your petitioner avers that it cannot be applied in his case, because the claim was presented (as he has already stated) by Dr. Baird in his lifetime, to the officers of the government, soon after his regiment was dissolved. When refused by them, it was by petition laid before Congress, and was repeatedly renewed up to the time of his death, 20th of October, 1805. Since then it was constantly urged by your petitioner, until it was finally acted upon in 1836; and his prayer for further relief has been still continued until now. The archives of Congress are referred to for the evidence of this persevering and earnest pursuit.

Your petitioner, therefore, prays that an act may be passed, directing the proper officers of the treasury to settle the account of Dr. Baird for the *half-pay* due him from the 29th of March, 1781, to the 20th of October, 1805, with *interest* on the deferred payments, until the 23d of June, 1836; and after deducting the amount granted by the act of that date, allow the balance to his representatives, with interest to this time.

And he will, &c.

THOS. H. BAIRD,
Administrator of the estate of Dr. Absalom Baird,
And also one of his two surviving sons.

The petitions of Dr. Baird, surgeon of Col. Baldwin's regiment of rtillery artificers, are on file in the archives of the House of Repre-entatives.

In the House journal of the 3d and 4th Congresses, (3d vol., pages 50, 247, 343, 626,) will be found proceedings upon them.

Petitions of an earlier date are on file, in the handwriting of the petitioner. Many documents are also on file, on the petition of Thomas H. Baird.

FEBRUARY 9, 1855.

The Committe of Claims, to whom the petition of the heirs of Dr. Absalom Baird, deceased, was referred, made the following report:

It appears that Dr. Absalom Baird, the ancestor of the petitioners, was a commissioned surgeon in the army of the revolutionary war, and was in actual service on the 17th day of January, 1781, when the resolution of Congress of that date was passed, providing "*that all officers in the hospital department and medical staff hereinafter mentioned, who shall continue in service to the end of the war, or be reduced before that time as supernumeraries, shall be entitled to and receive, during life, in lieu of half-pay, the following allowance, viz:*

"*Chief physicians and surgeons of the army and hospital, and hospital physicians and surgeons, purveyor, apothecary, and regimental surgeons, each equal to the half-pay of a captain.*"

The regiment of which Dr. Baird was regimental surgeon was dissolved, and he was dischargd from service (reduced) on the 29th of March, 1781. He thereupon became entitled to the half-pay of a captain for life, under the provisions of the resolution of Congress of the 17th of January, 1781. It is alleged he made immediate and frequent applications, from time to time, to the proper officers of the government, as the pay to which he was entitled became due; but, for some cause which does not certainly appear, was refused—probably owing to the fact that the government had no money to pay.

Thus stood Dr. Baird's claim on the 23d of March, 1783, when Congress passed a resolution providing that the officers and others entitled to half-pay for life "*shall be entitled to receive, at the end of the war, their five years' full pay, in lieu of half-pay for life, in money, (that is, specie,) or in securities on interest, as Congress should find most convenient.*"

It appears that Congress, in all cases, preferred issuing certificates *on interest.*

It is alleged Dr. Baird applied for the benefit of this *commutation law*, but was refused. After long-continued efforts to obtain payment, but without success, he presented his petition to Congress on the 28th of January, 1794, asking for relief. His application continued pending before Congress two or three years without any action on it, when he finally became wearied and disheartened with delay, and withdrew it. He died some years afterwards—in 1805, as alleged—leaving several children in their minority. When Thomas H. Baird, his eldest son, became of age, he was immediately appointed

administrator of his estate, to wit, in 1818; and on the 13th of February of that year presented his petition to Congress praying for relief. It was pending from that time until the 3d of March, 1835, when the committee to which it had been referred reported that "*Dr. Absalom Baird was entitled to the benefit of the provision of the resolution of the 17th of January, 1781, extending the grant of half-pay for life to the officers of the hospital department and medical staff.*" No further action was had at that session; but on the 23d of June, 1836, an act was passed granting five years' full pay as *commutation,* under the resolution of 1783, *but without interest.*

On the 12th of December, 1837, his heirs again presented their petition to Congress praying for further relief. Under this petition, a bill for their relief was reported on the 6th of March, 1838, which was twice read, and referred to the Committee of the Whole House, but was never afterwards considered.

Inasmuch as Congress, by the act of June 23, 1836, allowed five years' full pay as *commutation*, &c., disregarding the claim for half-pay which had accrued before the passage of the resolution of March 23, 1783, the committee will not now consider of the claim for half-pay. The question to which they have directed their attention is, as to whether *interest* should have been allowed on the five years' full pay, as computation, from the end of the war, the time when it was due.

The government had not the means to pay her officers their five-years' full pay at the end of the war; or, at all events, she did not pay them, but preferred to issue to those who applied, and whose claims were allowed, certificates bearing interest. It is, therefore, not to be questioned that to all such she did pay *interest*, as well as the principal, and this, in most instances, without the necessity of an application to Congress.

But there was a class of cases in reference to which application was made to Congress, the necessity for which, at least on claims for commutation, probably arose from the fact that the claimants had failed to apply in due time and obtain their certificates bearing interest. These applications were numerous from 1792 till 1834; and between those periods interest was uniformly allowed by Congress, or, at least, it was allowed in very many cases. The public records show, between those periods, as many as one thousand seven hundred and fifty-four cases in which interest was allowed, and quite a large number of them were for commutation pay.

The act of June 23, 1836, recognises the indebtedness of the government to Doctor Baird in the sum of $2,400. When did this indebtedness occur, and when was it payable? Certainly at the end of the war, in April, 1783; and it was for a sum certain. If Doctor Baird had then received his certificate, he would unquestionably have been paid *interest* upon it. That he did not receive it was not his fault. He made early application to the proper accounting officers, but was refused. He applied to Congress in 1794, and he, and his heirs since his death, have been, for almost the entire period since, urging Congress to provide for his payment.

It appears, then, there has been no *laches* on his part; and the payment of interest will be but in accordance with the uniform usage

of the government, in similar cases, for a period of more than fifty years. It is also believed to be a well-established rule, that a creditor of the government for a sum certain is entitled to interest when *laches* is not imputable to him, and payment has been withheld.

The committee, therefore, believe interest on the $2,400, allowed and paid to the heirs of Doctor Baird, should have been paid from the end of the war till the passage of the act for their relief on the 23d of June, 1836, which amounts to $7,656, and which, added to the amount paid, makes the sum of $10,056. But $2,400 being then paid, left the $7,656 still due. Interest on the sum till the present time makes the sum of $16,230, which is believed to be the amount to which the heirs are now entitled, and for which sum the committee report a bill, and recommend its passage.

A BILL for the relief of the heirs of Dr. Absalom Baird, late a surgeon in the army of the Revolution.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Treasury cause to be paid to the heirs of Doctor Absalom Baird, late a surgeon in the army of the Revolution, from the State of Pennsylvania, out of any money in the treasury not otherwise appropriated, the sum of sixteen thousand two hundred and thirty dollars, in full for arrears of pay due to them for the services of their said ancestor.

UNITED STATES COURT OF CLAIMS.

THOMAS H. BAIRD *vs.* THE UNITED STATES.

This claim, it is believed, is founded in strict right. The petitioners do not ask a gratuity from the munificence of the government, nor do they seek even a *quantum meruit* for the faithful services of their ancestor. If the case they desire to present is not *legal validity*, as well as *equity*, they are content that it be rejected.

The lineal descendants of Doctor Absalom Baird, acting by the regular administrator of his estate, demand from this great and prosperous nation the *stipulated remuneration* for the dangers, privations, and toil of their deceased father during the revolutionary struggle. They rest upon the ground of *express contract*, and unless *that* is established they abandon the pursuit.

Congress, by its legislative action, has, it is conceived, settled all the preliminary *facts* involved in the case; and the matters referred to this court are mainly questions of law. That Dr. Baird was a *commissioned surgeon* in the army of the Revolution, and was, as such, entitled to *half-pay for life*, has been determined by the highest authority in the land, and is no longer open to cavil or denial. But whether his heirs are bound to accept, at this late period, in full discharge of national engagement, the "*commutation*" which had been *refused* to *him* in his lifetime, and only granted recently "*without interest*," or whether his *vested right* to *half-pay for life*, with *interest*

upon the deferred payments, does not survive and subsist, as the just measure of indebtedness, and cannot now be compromised or relinquished by the administrator of his estate, are points for the decision of this high tribunal, and fall within the scope of its judicial function.

In order, however, to a proper application of the legal principles that may be pertinent, some knowledge of the merits of the claim is indispensable. A brief history, therefore, is offered, from the evidence found in the archives of the House of Representatives, and in the reports of several of its committees. (See papers filed, marked A, B, C, D, E, F, G, H, I, J, K, &c.)

From this documentary evidence it will appear that Dr. Baird entered into the svrvice of his country at an early period of the revolutionary war, and that some time in the year 1776 he was appointed *mate* in the general military hospital. He held that situation until 20th March, 1780, when, being earnestly urged by his superior officers, he accepted the place of surgeon to Col. Baldwin's regiment of artificers, in which corps he remained until 15th May, 1781, when it was reduced, and the officers were discharged. (See resolve of 29th March, 1781.)

The *equity* and *justice* of the claim arise out of the fact of his early and long-continued services in the hospital department during the most trying period of the war. Positive law has fixed the amount of compensation. Congress was fully sensible of the want of medical aid to the suffering troops, and by several resolutions promised to surgeons of all grades bounty land and half-pay.

This generous policy was indicated by several public acts of the government. The resolves of September, 1776, April and May, 1778, 11th August, 1779, and 21st October, 1780, settled a half-pay provision to *all officers*, without restriction or limitation, if they continued to the end of the war.

Had there been no other remuneratory grants, *these* would be sufficient to establish the right. But on the 17th January, 1781, a resolution was passed still more explicit and comprehensive in its terms. It provided "*that all officers in the hospital department and medical staff hereinafter mentioned, who shall continue in service to the end of the war, or be reduced before that time as supernumeraries, shall be entitled to, and receive,* DURING *life, in lieu of half-pay, the following allowance, viz: Chief physicians and surgeons of the army and hospital, and hospital physicians and surgeons, purveyor, apothecary, and regimental surgeons, each equal to the half-pay of a captain.*" (Vol. 3, p. 569.)

This enactment has been regarded by the several committees who have examined the case as a full and distinct recognition of the merits of this class of patriotic servitors in the great cause of freedom, and of the *obligation* of the government to pay the promised annuity. Mr. Ready, in his late report, (February 9, 1855,) says: "*The regiment of which Dr. Baird was regimental surgeon was dissolved, and he was discharged from service (reduced) on the 29th March,* 1781. *He thereupon became entitled to the half-pay of a captain for life under the provisions of the resolution of Congress of the 17th January,* 1781. *It is*

alleged he made immediate applications, from time to time, to the proper officers of the government as the pay to which he was entitled became due, but, for some cause which does not certainly appear, WAS REFUSED—*probably owing to the fact that the government had no money to pay.*"

This last suggestion presents, no doubt, the true reason why all claims against an exhausted treasury were unfavorably received. The fiscal embarrassment of the nation after the war made it necessary for accountant officers to be astute and severe in their examinations. In consequence of this excessive and factitious caution, it is feared that many honest and just rights have been disregarded. The poor veteran of the war has often shrunk from the obstacles thrown in his way in attempting to get his claim allowed, and has retired in poverty and silence, rather than be exposed to denial, or be compelled to meet unforeseen objections. That time is past. The "slough of despond" and the "hill of difficulty" which the wearied old soldier could not overcome have disappeared. Our country is prosperous; our treasury is full; the people are happy, and they are generous and grateful. The general voice now urges that the just demands of the revolutionary patriots should be answered to their children.

When Dr. Baird presented his claim for arrears after the war, as surgeon of Baldwin's regiment, he was refused on the false and frivolous pretext, that the "*artificers,*" being a new corps, were not embraced in the half-pay provision. Even Congress adopted this unreasonable and unjust ground of exclusion. A committee, to whom the petition of the officers had been referred, reported, that their claim did "not appear to be founded on the usage of nations or equity. They believe that half-pay has been allowed to MILITARY OFFICERS, partly from a regard to the hardships and personal dangers to which they were exposed, but chiefly from a consideration that, by a long continuance in the military line, they may have lost those habits by which they had formerly been enabled to provide for themselves or family—*which reasons do not apply so fully to the officers of artificers,*" &c.

In conformity, as he supposed, with the principles thus asserted, the commissioner of accounts, to whom the case was referred, again on the 25th August, 1786, rejected the claim of Dr. Baird.

The absurdity as well as injustice of the view taken by this committee is too apparent to require an argument in refutation. But admitting that there might be some propriety in refusing half-pay to officers called from civil life, at the close of the contest, as the artificers perhaps were considered, surely there could be neither justice nor reason for denying it to those who had been engaged *during the war,* and who were merely transferred, from other situations, to those regiments, to promote the good of the service. Such was Dr. Baird's case. He had been in the hospital department from 1776, and was induced, by the solicitation of his superiors, to accept of the place of surgeon to Col. Baldwin's regiment, under the expectation that it belonged to the line, and that he would be provided for as the other surgeons were. It was the universal understanding at the time, that the resolution of the 7th January, 1780, was intended to embrace them; and Dr. Rogers (his friend and senior) wrote to him, on 9th February following, that

"Congress (had) put the surgeons on the half-pay list, and given them the half-pay of a captain," &c.—(See letters enclosed in envelope K.)

Congress, by special acts, afterwards repudiated the exclusion of men, who had "borne the burden and heat of the day." Col. Baldwin and the officers of his regiment received their "commutation;" and by resolve of 8th May, 1781, (vol. 3, p. 617,) depreciation and half-pay were allowed to *chaplains*, who are certainly not "*military*" in their habits, attainments, or pursuits. They had, however, participated, in their peculiar sphere, in the support of the good cause.

The pretence upon which this claim was rejected will appear to every candid mind as a mere ingenious device to save the treasury at the expense of truth and justice. It was in direct opposition to the resolution of January, 1781, which had no reference to the corps of artificers, but was general in its terms and included *all officers* of the medical department, without restriction or limitation. Under its provisions Dr. Baird became entitled to half-pay for life. He was discharged from service on the 29th March, 1781, and his stipulated annuity commencing running on that day.

"By the laws or resolutions of the old Congress, INTEREST *was allowed on all claims and to all creditors of the United States, from the time payment became due.*" (See "Compend., &c., on revolutionary claims," Document No. 42 for 1837–'38.) Of right, therefore, he ought to have received his accruing half-pay, with interest upon any amount refused or withheld, as above stated. But he never could obtain any portion of the promised remuneration, although repeated and urgent demands were made.

The claim of Dr. Baird remained in this state of negation until the 23d of March, 1783, when Congress passed a resolution providing that "*the officers*," &c., shall have "*at the end of the war their five years' full pay in lieu of half-pay for life,* IN MONEY, (*that is,* SPECIE,) or in *securities* on INTEREST, as Congress shall find most convenient." (See same document No. 42, and Journal of the House, vol. 4, p. 178.)

By this *new contract*, Dr. Baird became entitled, not only to the arrears due to him under the former grant, but to an immediate additional sum in specie, equivalent to *five years' full pay;* it being the granted *commutation* of his half-pay for life.

He was, however, denied the benefit of this substitution. Payment was refused; and after repeated demands and earnest efforts with the accountant officers, he was compelled to apply to Congress for relief. On the 28th January, 1794, his petition was presented to that body, praying "*that the allowance of half-pay, and other emoluments, granted to the medical staff in the service of the United States, may be extended to him.*" (See House Journal, vol. 2, page 50.)

He was constrained thus to fall back upon his right under the half-pay establishment, because, *that* provision being denied him, there could not be any "*commutation*" for it allowed. And, besides, as the new arrangement was intended for the *benefit* of the officers, by furnishing a present fund, to enable them to enter into some business in civil life, it had totally failed in this object, as to him. He had to begin the world without any such aid, and struggle as he could.

Dr. Baird's appeals were renewed from time to time, until 21st De-

cember, 1796; when it was "ordered," that he have leave to withdraw his petition. (See "List of private claims, &c.") The claim was never abandoned; nor was there *laches* or delay in the prosecution of it. Dr. Baird had removed (perhaps in 1786) to Western Pennsylvania, and died there on the 20th October, 1805, leaving several children—all in their minority. When Thomas H. Baird, (the present petitioner,) one of his sons, came of age, he took out letters of administration; and on the 13th February, 1818, presented his petition to Congress, praying allowance and payment of the debt justly due to his late father. It was frequently renewed, (see "List of private claims,") but no action could be obtained until 3d March, 1835, when the committee, to whom the matter was referred, made a report, *admitting Dr. Baird's* RIGHT TO HALF-PAY FOR LIFE, but offering a bill granting five years' full pay—as *commutation*—"without interest." (See "Mr. Crane's report, &c.") It lay over until the 23d June, 1836, when it was passed. (See House Journal for 1829–'30, January 4th; also Journals, 1833–'34, page 39, and 1834–'35, pages 84 and 492.)

Under this law $2,400 were paid from the treasury; but the petitioner, conceiving that this sum fell very far short of the amount justly due, as acknowledged by the committee and by Congress, again, on the 12th December, 1837, presented his petition, praying further and full relief. A bill (No. 617) was reported by Mr. Underwood, on the 6th March, 1838, which was twice read and committed, &c., (see Journal, p. 557.) It was continued (see pages 697, 753, 903, 960) until 1st June, but was not taken up on that day, and seems to have been consigned to the "loculamentum" of neglected rights.

Once more, (and for the fifteenth time—see "list," &c.,) the representatives of Dr. Baird appealed to the justice of the country, and on the 9th February, 1855, Mr. Ready reported the bill which is referred to this honorable court.

This brief summary presents the case in outline. Perhaps it may not be thought impertinent to extend the review in some particulars, in order to illustrate the points specially involved; and it is a source of gratification and confidence to the parties interested, that they are before men whose habits of mind and judicial training have made them "too fond of the right to pursue the expedient."

The petitioner has a full and abiding conviction of the *equity* and *legal validity* of his claim. It is founded on the meritorious services and great sufferings of his ancestor; in consequence and in consideration of which the government promised an annuity, equivalent to the half-pay of a captain for life. Congress, by the grant of "commutation," has determined that he was entitled to this permanent annual provision, because there can be no *substitution* for that which does not exist. The obligation to pay Dr. Baird a certain fixed sum, therefore, every year that he should live, is *acknowledged;* but the amount allowed does not fill this just requirement of the case. The petitioner now demands a DEBT, with all the legal incidents that follow, when payment is withheld. There can be no remission or change in the character and extent of the liability at this late day. An arrangement or modification, intended for the benefit of the creditor, if

refused at the time, cannot afterwards be resumed, to the prejudice of his heirs, at the posthumous option of the delinquent debtor.

The petitioner only asks from the nation what it fairly owed Dr. Baird, on the day of his death, by the terms of its legal stipulation, with *interest* for the detention. He appeals confidently to the first elementary principle of our Union, as asserted in the constitution. The people formed our glorious compact "in order *to establish justice;*" and in conformity with the beautiful precept of Christianity, "*to render, therefore, to all, their dues.*" Congress, whenever it has been brought to definite action, has generally observed this modification of the "*golden rule;*" but there have been frequently delays interposed which amounted to cruel wrong.

Dr. Baird served his country faithfully and well in his early and ardent manhood, and in the vigor of his life. He was exposed to circumstances of great privation, toil, and pain. The pay received was nominal and quite inadequate to supply his urgent wants. It was always in arrear. He was compelled to apply to Congress for the balance due him in the hospital service, and was put off with the assurance that Pennsylvania would make up his depreciation; which, however, was refused, (see A, and Col. King's letter in J,) and of the amount owing to him, $1,891 60, he only received $333 35; for a balance of which he had to take the paymaster's note, (see account against Pennsylvania for depreciation, in J.) Whether anything was obtained afterwards, is not known. If it was, it did not compensate for the delay and expense of repeated applications.

From papers filed in this case, at an early stage, it may be seen that in order to make a decent appearance, he had to obtain from his mother many indispensable articles of clothing; and on one occasion, such was the difficulty of procuring linen, she cut up the sheets of her beds to make him shirts. This is a single one of the distressing incidents and the humiliating shifts of the struggle. The history of the "sad variety of woe," experienced during the period of the Revolution, is now but little known to our prosperous and happy people. The traces of the *bloody foot-marks* of the unshod soldier of liberty are long ago washed from the soil, and the mournful story of his perils and his sufferings will soon fade from the memory of living men.

From 1776 to 1781 was, emphatically, the "*time that tried men's souls.*" Pitkins says: (vol. 2, p. 165,) "The distresses and discontents in the army were not confined to the soldiers, but extended to the officers. *Without pay, and often without comfortable subsistence, and sometimes entirely destitute,* many of the officers resigned, and others threatened to follow their example, unless assured of more adequate *provision for their future support.*"

General Washington earnestly recommended a half-pay establishment, and it was granted—at first for seven years. This, however, was not considered sufficient, and therefore, in accordance with the wishes of the commander-in-chief, and the exigencies of the service, "*half-pay for life was given* (October, 1780) *to all the officers, including those who might be reduced.*" (See 2d Pitkins, p. 168, and executive document No. 42.)

The provision was declared (1781, January 17, as already shown) to extend "*to the officers of the hospital department and medical staff*," &c.

At a subsequent period, (25th February, 1783,) we find on the journal (see vol. 4, p. 166) the reasons assigned which had induced the half-pay establishment. The entry is in these words: "*Whereas, in consequence of the faithful services of the officers in the army of the United States and of their great sufferings, not only on account of the deficiency of their pay, but on other accounts, Congress have, by divers resolutions, promised them half-pay for life*," &c. No discrimination is made.

This declaration expresses fully the sense entertained of the hardships and the merits of these gallant men.

It has been stated that Dr. Baird's regiment was dissolved on the 29th March, 1781, and by force of the laws referred to he became at once entitled to a current allowance of *half-pay*, as the stipulated remuneration for his past services. The amount, which was precisely *fixed and ascertained*, he ought to have received, if no other contract had been substituted, *every year*, so long as he lived, as "*a provision for his future support.*"

Not a farthing of it was ever paid to him, although solicitations, humiliating to a brave soldier and true gentleman, were frequently addressed to the proper disbursing officers, and afterwards to Congress. The wrong was the greater, because the whole legal arrangement of the matter put it upon the footing of *money wages* for military services; to which he was undoubtedly mainly stimulated by patriotic feelings. He was not allowed to cherish the thought that a grateful country acknowledged and esteemed his generous efforts in her cause. This might have cheered and consoled him in his future course—even were it one of poverty and trial:

> ——— *thanks*, to men
> Of noble minds, is *honorable meed.*

But he was placed in the light of a stipendiary, and yet was denied the promised reward.

If the claim rested upon the resolutions already referred to, how would it now appear? In answer to this question, the petitioner begs permission to present a calculation, based upon established legal principles and settled usage; not asserting it to be perfectly accurate, but sufficiently so for illustration.

The half-pay was 240 dollars per annum, receivable *at the end of every year*. If not discharged upon demand, at the time when payable, *interest* upon the amount due was the legal compensation to the creditor. Not only universal custom, but *positive law*, in all commercial countries, has established this principle.

The credit system is no longer exposed to the merciless exactions of Jews and Lombards. The proper distinction between grasping *usury* and fixed interest is well settled and understood.

It is said that the first act of Parliament, limiting the rate per cent. in England, was passed in 1546, near the close of the reign of Henry 8th. Since that time, with a short interval, in which superstition revived, the whole matter has been subject to statutory regulations. In

fact it may be considered doubtful, whether always, at common law, compensation for the "*detainer*" of money was not allowed as *damages*. At all events, the rule and the practice are not now questionable. One authority (out of many) may be referred to in this place, as most brief in its terms: "*Interest is due upon all liquidated sums, from the time the principal becomes due and payable.*" (See 2d Blackstone's Reports, p. 761.)

The revolutionary government, as has been shown, had always acted upon this just basis; and the United States since, in the case of the Virginia officers, gave a pertinent example, in the act of 5th July, 1832, by directing "*to be paid to those officers, or their representatives,* INTEREST *upon each year's half-pay, from the time the same became due.*" (See Doc. No. 42.)

As this question, however, is a prominent part of our case, it will be referred to hereafter, for the purpose of further examination. But for the present, assuming this rule of justice and upright policy to be clearly established, the following exhibit is made: From the 29th March, 1781, to 20th October, 1805, the day of Dr. Baird's death, the total of his half-pay then due would amount to more than $5,280; and the interest accrued upon the yearly deferred payments would be $4,150; making an aggregate of debt, at that time, of $10,030, by the terms of the governmental contract, expressed in the resolutions, and ascertained according to the settled rules of computation.

Death closed the annuity; and at the date of that event, the representatives of Dr. Baird had an immediate right to this sum, by the laws of the land. With merely simple interest current, up to June, 1836, it would amount to $28,485; and deducting $2,400, allowed by act of that date, would still leave $26,085 *then* fairly due.

This may seem large; but it is adjusted in the most favorable mode for the debtor that judicial rules or commercial usage will allow. There is no *interest upon interest* in either stage of the process. It gives no greater benefit than that which every officer, who was promptly paid, has actually enjoyed. *They* each received the stipulated remuneration, and they and their heirs have had the *use* (at least equivalent to interest) ever since.

A brief statement will show that the heirs of Dr. Baird would perhaps not be in as good situation, were they to obtain the sum named, with its accumulated interest, as they might have been in if the money due had been paid at their father's death, or at any time previous.

Dr. Baird was killed by a fall from his horse. He left a family of children—all in their minority. In consequence of some liabilities incurred in a commercial business, his affairs were embarrassed, and his whole property, real and personal, was sold to satisfy his creditors. The sacrifice was enormous. His library was perhaps the best, at that period, west of the mountains. It went at nominal prices; and his collection of rare and valuable books, minerals, &c., were scattered to the winds. A good stock of medicines, and a well-furnished drug store, brought a mere trifle. All was swept away, and his family was left entirely destitute. One-half of the money then due to him by the government would have paid all his debts, saved his property, and left some provision for the maintenance and education of his children.

These facts are not suggested as *evidence*, but merely as illustrating the wrong which is done by withholding the payment of money after it becomes due. The petitioner does not ask that the government *now* shall repair the ruin caused by the delinquency of an early administration; but he thinks that the circumstances detailed sustain the principle, that when there is wilful detainer of an ascertained sum, *interest* is the *legal*, though, it may be, inadequate compensation to the delayed creditor.

He demands, therefore, *the half-pay for life*, and *interest*, according to the estimate presented; and he thinks nothing short of this will fulfil the national obligation.

But there is another aspect of this case which the action of Congress has presented for the consideration and decision of this court. On the 5th January, 1836, upon full examination by a committee, to whom the matter was referred, it was determined that "*Dr. Absalom Baird was entitled to the benefit of the provision of the resolution of Congress of the 17th January, 1781, extending the grant of half-pay for life to the officers of the hospital department and medical staff.*" A bill was also reported, directing "the proper accounting officers of the treasury" "to settle the account of Dr. Absalom Baird, &c., and to allow his legal representatives compensation equal to five years' full pay of a captain of infantry in the service of the United States on continental establishment, without interest, which five years' full pay is the commutation for his half-pay for life, &c. (See Mr. Crane's report & H. bill No. 831.)

This bill was passed into a law on the 23d June, 1836, as already stated, and under it $2,400 were paid. The petitioner, however, could not regard this amount as a full performance of the contract of the government with Dr. Baird, and therefore renewed his appeal to the justice of Congress. After great delay and some intermediate action, (see report of Mr. Underwood,) a bill was returned to the House by the Committee of Claims, granting "*to the heirs of Dr. Absalom Baird, late a surgeon in the army of the Revolution, from the State of Pennsylvania, out of any money in the treasury not otherwise appropriated, the sum of sixteen thousand two hundred and thirty dollars, in full for arrears of pay due to them for the services of their said ancestor.*"

The reference made by the resolution of the last session has brought this case in all its aspects before this court for examination and decision.

In the report accompanying the bill (No. 91) Mr. Ready presents, with great fairness and candor, a succinct history of the claim, and declares that Dr. Baird "*became entitled to the half-pay of a captain, for life, under the provisions of the resolution of Congress of the 17th January, 1781.*" He waives, however, the inquiry as to some important particulars, and says: "*Inasmuch as Congress, by the act of June 23d, 1836, allowed five years' full pay as* COMMUTATION, *&c., disregarding the claim for half-pay which had accrued before the passage of the resolution of March 23d, 1783, the committee will* NOW *consider of the claim for half-pay. The question to which they have directed their attention is as to whether* INTEREST *should have been allowed on the*

five years' full pay as commutation from the end of the war, the time when it was due."

If that just and liberal gentleman had permitted himself a wider range in the expression of his views, it is believed he would have presented this case in a much more favorable category. As an upright and sound lawyer he would, no doubt, have said that Dr. Baird had a *vested right* to half-pay for life, by a grant of the government, founded on a meritorious consideration; that this *express contract* could not be vacated or modified by any new arrangement unless with the consent of those concerned, and efficiently carried out by the party charged with obligation to performance; that government, having denied to him the benefit of the substitution at the time when it might have furnished the aid to his establishment in life, which was contemplated, had violated and nullified the agreement as to him, and he was thrown back upon his position under the resolution of 1781, and remained entitled to its full provision.

This, it is firmly believed, is the law, as recognised by all jurists, and as asserted by elementary writers. It is submitted.

In looking at the "commutation" side of this subject there is an omission which effects great injustice. From the day of Dr. Baird's discharge from the service to the 23d March, 1783, two years nearly had elapsed, in which his half-pay was current and in arrear. The sum due, with legal interest, would now be about $2,068, only $332 less than the act of 1836 allows. As Congress has admitted the right to half-pay it was running during this period, and as payment was refused, interest is the legal compensation.

The item thus "disregarded" by the committee of 1836 is sufficient to absorb nearly the amount allowed by their bill, and the "commutation," in full tale, would be due if that plan is adjudicated. Should the half-pay principle be sustained, however, it will embrace the whole claim, and this particular need not be then considered.

The question is, What amount is due from this nation to the heirs of Dr. Baird for the services of their father during the war of the Revolution, as promised by the Congress?

The petitioner has presented his view of the legal indebtedness, and thinks that no other measures will satisfy the justice of the case and vindicate the honor of this great people. He admits, however, that Dr. Baird was willing to accept the commutation if he could have obtained it. The purpose for which the substitution was made would have been answered. He would have been enabled to enter upon the civil pursuits of life with some advantage. It was denied, and he died without having received a farthing of the promised remuneration. At a later period his representatives would have gladly acquiesced in the change of provision, but it was still refused. After fifty-three years' delay the committee of 1836 placed the claim on this footing, but by what warrant of pre-existing law is not clearly seen. Perhaps it was on the principle of a gratuity, as the sum given does not fill the requirement of the case. The heirs, although not willing to regard it as a *boon*, would have taken it, even at that late day, if the amount had corresponded with any reasonable or just substitution. It did not. The committee in their report declare that Dr. Baird was

"entitled to half-pay for life;" but their bill only gives in lieu five years' full pay, and "without interest," though no reasons are set forth why it was not allowed as a just element of the debt. It appears from document No. 42, where the case is referred to, that it was not rejected by any judgment on the question, but that it was left open "to await the decision (then) pending before the House of Representatives." Congress, by passing the law, affirmed the views expressed by the committee, but the sum allowed was inadequate even to the purpose declared. It was not "commutation," which imports something equivalent, at least, in the estimation of contracting parties. There is no person, however, who will say that $2,400 paid thirty years after Dr. Baird's death would be a fair exchange for his life annuity. Can an admitted debt be discharged by less than a tithe of its true amount? Reason and justice reject such a proposition.

Besides, this new arrangement, varying and greatly reducing the acknowledged liability, required the assent of the parties interested and injuriously affected by it. Perhaps the heirs of Dr. Baird might, individually, consent to compound for, or even to relinquish, their respective shares of the debt, but without their free concurrence the act of Congress would be *ex parte*, and not valid *in foro conscientiæ*. It would be a dictate of power—not a minifestation of right.

The grant of $2,400, then, is not "*commutation.*" But would the addition of *interest*, for the whole period, make it such?

Mr. Ready, in the bill presented at the last session, allows $16,230 to be paid "*in full of arrear, &c.;*" but, looking at his report, it will be found that this aggregate is arrived at by a calculation of interest upon the sum granted by the former law. He was too just to say that it is a fair equivalent for the half-pay for life, promised and withheld; but assuming the action of the Congress of 1836 as a basis, and not feeling at liberty to nullify the principle it had adopted in the adjustment of the claim, he merely supplies what he considered an omission.

His argument as to this particular is conclusive. Why should not interest be allowed in any aspect of this case?

If ever there were claims against a government founded in the highest merit, they are those of the veterans of the Revolution. They engage the honor of this nation more than any others; and the patriotism of that man may be questioned who can meet them with a sneer, or regard them with cold distrust and waton cavil.

The history of this very "commutation" plan originates in the grateful sense entertained of the services and sufferings of the officers, and the desire to provide for their support after the toil of war was done. The whole arrangement was intended for their benefit; and, therefore, every grant or provision made in their behalf ought to receive the most favorable construction that its terms will at all admit.

A brief review may not be thought irrelevant.

The allowance of half-pay for life was at first satisfactory; but at the close of the year 1782, "it was reported that Congress did not intend to comply with their engagement." "This," (says Pitkins—2d vol, p. 168,) "created no little alarm in the army. In December of that year the officers presented a memorial to Congress, not only on

the subject of the half-pay, but of the arrearages still due to them. 'We have struggled, they say, with our difficulties, year after year, under the hopes that each would be the last; but we have been disappointed. We find our embarrassments thicken so fast, and have become so complex, that many of us are unable to go further.' Again: 'Our distresses are now brought to a point. We have borne all that we can bear. Our property is expended; our private resources are at an end; and our friends are wearied out and disgusted with our constant applications.'"

This was no fancy sketch. The commander-in-chief affirmed its truth; and in a letter to Congress, dated on the 18th March, 1783, urged a compliance with the prayer of their memorial. "If," says the General, "besides the simple payment of their wages, a further compensation is not due to the sufferings and sacrifices of the officers, then I have been mistaken indeed. If the whole army have not merited whatever a grateful country can bestow, then I have been beguiled by prejudice, and built opinion on the base of error. If this country should not, in the event, perform everything which has been requested in the late memorial to Congress, then will my belief become vain, and the hope that has been excited void of foundation. And if (as has been suggested for the purpose of inflaming their passions) the officers of the army are to be the only sufferers by this revolution; if, retiring from the field, they are to grow old in wretchedness, poverty, and contempt; if they are to wade through the wild mire of dependency, and owe the miserable remnant of that life to charity, which has been hitherto spent in honor, then I have learned what ingratitude is; then shall I have realized a tale which will embitter every moment of my future life."

This eloquent appeal produced the proper effect, and in a few days the resolution giving "commutation" was passed. Had Dr. Baird, under its provisions, received five years' full pay, in money, he would have been in possession of $2,400, which, in the state of the country at the time, would have been a clever capital to begin the civil pursuit for which he was qualified. It was denied to him; and, as the Congress of 1836 has determined wrongfully, will not a great nation amply redress the injuries done by its public functionaries?

Perhaps it may not be possible to repair fully the loss occasioned by the national delinquency; but surely the best measure attainable ought to be allowed. Damages for breach of contract is not sought, but interest, in one or other view of the case, ought to be given.

It is just and right upon principles of Christian ethics, without reference to social policy or public law. Equality is equity. Where different persons, therefore, render serivces of like value, in the estimation of their employer, they ought to be placed on a level in the adjustment of their remuneration. The revolutionary Congress so intended. The resolutions granting half-pay for life, made no discrimination. The act of 1783, also, placed all the officers of the army upon the same footing; and the compensation was determined, as to its amount, simply by their rank. Every one was entitled to five years' full pay, in money, ("which meant specie,") or with interest, if payment was deferred, and public securities given. But even were

there no stipulation as to interest, still, upon the fair principle of "*quantum meruit*," it became necessarily involved; because those who received their allowance had the immediate use of it, to forward their pursuits in life; but those who were denied or delayed were thus defeated of the very purpose for which it was given—to "aid their future support." This would be great injustice; and it would operate a wrong that the framers of the law could not have contemplated. It was intended that all should receive the promised reward; or if payment was refused or postponed, that they should have the legal compensation for the delay. This is manifest from the settled usage of the period.

It has been said, however, that governments are under no obligation to pay interest! This is denied, most emphatically. The general, unqualified proposition is not only contrary to reason and justice, but is repugnant in terms to an elementary principle of our Union. In the 5th article of the "amendment of the constitution of the United States," there is a guarantee of the rights of the citizen, in these words: "Nor shall private property be taken for public use, without just compensation, &c." It is believed that the present case is embraced in the spirit of this protective clause, if it does not fall within its very letter. What is meant by "property?" It is that tangible *peculium* which a man owns in his separate, independent right, whether it be lands, goods, money, or debts outstanding and due.

Now the act of 1836 settles beyond denial that Dr. Baird was entitled to $240 from the treasury, payable at the end of every year during his life. This money (or $2,400, its "commutation,") ought to have been paid. Mr. Ready, in his report, says: "He made immediate and frequent applications from time to time to the proper officers," and "was refused." The "private property" of a citizen, and a soldier, was thus "taken for public use." What "just compensation" ought to be made for this admitted wrong? Can it be less than the law allows, in other cases, for the mere detention of a debt? Our political corporation, then, contains the principle of reciprocal justice that Christ enjoined, in these words: "*Whatsoever ye would that men should do to you, do ye even so to them.*"

From whence is this alleged rule derived, which absolves a *government* from a liability which every *individual* incurs who neglects or refuses to pay what he owes? It is not founded in ethics or political law, and no respectable authority can be referred to as sustaining the broad proposition. There may have been a time when monarchs made up a deficit in their revenue by arbitrary and oppressive taxes or by cruel extortions. If these means, however, were sometimes inadequate, and *loans* were resorted to, they paid, for the *use of money*, whatever rate the Shylocks, who were spread over Europe as *bankers*, thought proper to charge. And as the fathers of the church, from an absurd interpretation of scripture, had condemned *usury* as a *sin*, the *rate* was in proportion to the imputed guilt. About the beginning of the thirteenth century, the countess of Flanders borrowed money from the Jews, or Italian merchants, to ransom her husband; and the lowest interest she paid was twenty per cent., and some exacted from her near thirty. All this is changed. Absolute power and

servile submission in the relation between sovereign and subject have yielded to the social prosperity growing out of the commercial habits and intercourse and the industrial pursuits of men. If rulers want the people's cash now, they must obtain it by contract, and are bound to pay for its use an amount limited by law, which varies in different kingdoms and States. The notion, too, that the taking of interest was contrary to religion, founded upon a mistaken application of a precept of the Mosaic code, has been long ago exploded. Such an idea never prevailed in this country, and is wholly repugnant to the just sentiments of free citizens. Usury is punished as a species of fraud, but fair compensation for the advantage of money is allowed and regulated here, and in every other civilized and trading country.

According to our theory and practice, governments resting upon the public will, although not subject to any coercive process, are bound, by reason and justice, to pay interest wherever, in similar case, an individual would be compelled to pay by the enforcement of positive law. Not an instance can be produced from our national records, conflicting with this general position. There never has been any other denial than that of delay. Congress, when brought to an examination, has never even suffered lapse of time or technical bars, founded in mere policy, to defeat finally the recovery of fair and honest claims. The perseverance of Amy Darden has furnished one memorable illustration; the success of Dr. Baird's heirs in obtaining right, after years of protracted endeavor, will, it is hoped, supply another. There i unfailing confidence that justice, though tardy, will at last prevail, and every act of our glorious republic stand fully vindicated.

Vattel says: "All the promises, the coventions, all the contracts of the sovereign, are naturally subjected to the same rules as those of private persons." (Book 2d, ch. 14, p. 213.)

The same principle is more fully asserted by a venerated authority of our own. In Thorndike *vs.* United States, (1 Mason's Reports, p. 20,) Justice Story observes: "If the present were a contract between private citizens, there can be no doubt that the court would be bound to give interest upon the contract up to the time of payment; and if by law the amount due on the contract could be pleaded as a tender or a set-off to a private debt, it would be a good bar in the full extent of the principal and interest due at the time of such tender or set-off. Nay, more; if the note or promise were made by a citizen to the government, the latter might enforce its claim to the like extent. Can it make any difference, in the construction of the contract, that the government is the debtor instead of the creditor? In reason and equity it ought to make none, and there is not a scintilla of law to justify any. If a suit could be maintained against the government, I do not perceive why it would not be as much the duty of the court to render judgment in such suit, for the principal and the interest, in the same manner and to the same extent as it would in the case of a private citizen. The United States have no prerogative to claim one law upon their own contracts as creditors and another as debtors. If, as creditors, they are entitled to interest, as debtors they are bound also to pay it."

This view accords with the "rule of right and the fitness of things."

A few particulars in the personal history of Dr. Baird's sons and heirs, the present claimants, may not be irrelevant in illustration of this doctrine, and to show the practice of the government in the collection of its debts.

Thomas H. Baird was at one time president of the Bank of Washington, Pennsylvania, in which, by an arrangement with the treasury, the collectors deposited the spurious and worthless paper then received in payment of the public revenue. In 1818 he was appointed to the judicial bench of the district and resigned his place in the bank, which in a year or two afterwards yielded to the general pressure and failed. It was indebted to the government perhaps over $7,000 at the period referred to.

The attorney of the United States, knowing the connexion which Thomas H. Baird had formerly held with the bank, consulted him as to the mode of recovery, and finally induced him to take the deposite receipt, and dispose of it to those who were indebted to the institution. It was so done. Four thousand dollars were lent to George Baird, and the balance Thomas H. Baird applied to the discharge of two debts in which he was surety. To provide for the eventual payment of the portion for which he remained personally liable, Thomas H. Baird conveyed to George Baird an interest in a steam mill (which had cost, perhaps, $40,000) and also a coal bank. George Baird thus became debtor to the United States for the whole amount.

The two brothers then went on to establish a cotton-factory in the steam-mill, and expended a great deal of money in the enterprise; George Baird was the acting partner.

The times were unfavorable, and the business did not succeed. In the mean time, the *interest* on the debt to the government was not paid; and at length the attorney for the United States required security. The demand was promptly met. The *interest was computed and added to the principal.* A judgment bond was then taken for the aggregate sum, in which Thomas H. Baird and another brother, Wm. Baird, became sureties. *The amount was nearly doubled by the process, and* INTEREST *upon* INTEREST *was thus charged.*

George Baird, after some time, gave up the cotton enterprise in despair, reconveyed the mill to Thomas H. Baird, and moved down the Ohio river.

In the course of a few months, the steam-mill property was burned to the ground; and by this overwhelming calamity the estate, which was considered specially charged with this debt, was totally *lost.*

During all this period, the petition of the heirs of Dr. Baird, praying the allowance of his half-pay, &c., was pending before Congress. No "set-off" or further delay, however, would be granted. The judgment bond was entered; execution for the original debt and the compounded interest was issued; and the property of the three brothers was *sold by the sheriff*, to the value of $20,000, at least, according to any fair estimate.

This was in 1834; and in 1835 it was determined, by the first committee who could be induced to examine the case, that "Dr. Absalom Baird was entitled to the benefit of the provision of the resolution

of Congress of the 17th January, 1781, extending the grant of half-pay for life to the officers of the hospital department and medical staff."

The act giving "commutation" was passed in the next year; and thus three citizens, who had been ruined by the failure of the government to pay the amount, admitted to be legally due to them, were mocked by the show of tardy and inadequate justice.—(See memorial on file.)

This is a mere outline; if the details were given, they would exhibit a case of severe enforcement that a private creditor would scarcely have used under the circumstances of misfortune that existed, from providential dispensation.

It is not referred to, however, for the purpose of complaint, nor as evidence; but simply to show that the United States, when *creditors*, do compel the payment of *interest;* not according to commercial usage merely, but under the strictest rules of judicial practice. It is intended, moreover, to justify the opinion expressed by Justice Story, as quoted, that when "debtors," they are also bound to pay interest.

This is as sound *political* as it is *municipal* law, and is so recognised in every country where Christian ethics form the basis of public administration.

Congress has never, by a solemn decision, rejected the claim to interest where a *precise debt* was due, and no *laches* appeared on the part of the creditor, in demanding payment. Neither has there been undue strictness in imputing *laches* heretofore, as will be shown.

The established rule, it is believed, is as stated by Mr. Kissock, on the floor of the House: "Where the claim is for an ascertained certain sum, and the time of payment has arrived, a contract for the payment of interest is a legal and necessary implication."—(See Congressional Globe, vol. 23, p. 444.)

In Dr. Baird's case, therefore, if the accountant officers had not considered themselves restrained by the words "*without interest*," in the act of 1836, they would have been warranted in allowing it.

Mr. Houston, also, (Appendix to Cong. Globe, vol. 22, p. 889,) lays down the received doctrine briefly but truly: "If I understand," (he says,) "the rule under which *interest* is allowed on claims against this government, and every civilized government in the world, I believe it is this: when the claim is for a certain and ascertained sum of money, in the nature of a debt," &c., "in all such cases it has been the uniform practice of all governments, I believe, to allow interest, at the usual rate, on the demand," &c.

No case can be found where this just principle has been repudiated *in direct terms;* and it has only been denied *practically, by delay.*

The opinions of Attorneys General have been referred to, but not one of them sustains the broad position. Mr. Wirt, to be sure, says, that "interest is not a thing of course; it is in no case a part of the debt, nor is it a necessary consequence of the debt. By the polity of many nations it is forbidden in all cases; and by those whose laws allow it, in cases between individuals, it is not allowed as a matter of *right* in every case; on the contrary, it is allowed only where the character of the contract covers the claim, as in penal bonds, where

the penalty exceeds or equals the claim; or where the parties have by their contract expressly stipulated payment; or where the circumstances of the case call for its allowance, as a matter of equity in the particular instance."—(Opinions, vol. 1, p. 555.)

It must be observed that the elementary doctrine here suggested does not seem to involve the question of national obligation, but refers only to the rules of municipal law. Even in that respect, too, there is inaccuracy. The payment of interest, wherever there is an ascertained debt owing and demanded, is the *general* liability; cases of exemption are exceptions.

It is also denied that the "polity" of any commercial nation, at the present period, prohibits the regulated compensation for the *use* of money. There was a time when Christians were not allowed to receive *interest;* and so detestable was the practice of *usury* regarded, that 700 Jews were slain in London, in the year 1262, because one of that hated race had taken for a loan of 20*s.*, the enormous rate of 2*s.* per week. Severe laws were enacted to repress and punish what the superstition of the time considered a sin. In 1274, in England, every Jew lending money was compelled to wear a plate on his breast signifying that he was a *usurer.*

The progress of trade and a more intelligent Christianity changed the policy of nations. In the 15th century it was no longer thought a crime to take a fair equivalent for the advantage of money. By 37th Henry 8th, (A. D. 1546,) 10 per cent. was settled as a legal rate in England. Charles 5th fixed 12 per cent. in Spain, Germany, and Flanders, in 1560; and by the other countries of Europe and elsewhere, the practice was regulated. The old prejudice was revived in England, and the law of Henry was repealed by Edward 6th; but it was restored by Elizabeth, and has been continued ever since; though the *rate* was reduced by 13th Anne, (1714,) to five per cent., and so remains.

In the reign of James 1st (1624) the word "interest" was first adopted, to denote the lawful rate, and to distinguish it from "usury," which has been retained to express the "criminal extortion."

But Mr. Wirt admits to the full extent that is asked in this case, when he says it ought to be allowed "when the parties have expressly stipulated payment," and when it is "a matter of equity," &c. Mr. Crittenden indicates a concurrence in this view. In the "Florida claims" case he expresses the opinion "that indemnification or satisfaction for property illegally taken or destroyed includes not only its value, but interest upon that value, as an equivalent for the loss of the use of that property," &c. This imports that the nation is bound, by the principles of justice, to make full reparation.

Mr. Wirt, in the "Giles case," (Opinions, vol. 5, p. 268,) says: "Interest is in the nature of damages for withholding money which the party ought to pay, and would not or could not," &c.

In this brief sentence is contained the main point of the case now presented to this honorable court. It is claimed that from and after the 29th March, 1781, the day on which he was reduced, Dr. Baird was entitled by governmental contract to half-pay (a certain fixed sum) during his life, payable at the end of every year; and, according

to the rule directed by act of 5th July, 1832, in the case of the Virginia officers or their representatives, "with interest upon each year's half-pay from the time the same became due." (See Document No. 42, and 8th vol. U. S. Laws, p. 654.)

It is firmly believed, and is respectfully urged, that this forms the just and true measure of indebtedness, and that nothing less will fulfill the national faith.

The "commutation act" was designed to place the officers upon a better footing. It would have done so had the amount been promptly paid or the securities given, so as to enable them to enter upon the pursuits of private life with some advantage. At this late day it would be only a compromise for the benefit of the debtor—a great and prosperous nation—at the expense of poor and wearied creditors, who must, from necessity, take a pittance as the dole of charity, when they ought to receive the full reward of honorable service.

If, however, the heirs of Dr. Baird, in accordance with the restrictive views of the committee who reported the act of 1836, must accede to the substitution of five years' full pay in lieu of half-pay for life, they ask that interest upon the amount from the 23d March, 1783, be added, giving credit for what has been received.

They also claim that the current half-pay, which had accrued in the interval from the 29th March, 1781, to the passage of the resolution granting "commutation," with interest for the whole period to this time, be allowed.

It is, however, respectfully urged that they are justly entitled to the half-pay for life, with interest, according to the rule of computation which law and usage have established.

Is there anything in the case that ought to interfere with this fair adjustment? Has there been laches or delay which should incur a forfeiture?

Mr. Reverdy Johnson, in Francias' case, (Opinions, vol. 5, pp. 105 and 109,) says: "In general, the government, which is always presumed ready and willing to discharge its obligations, pays no interest." And again: "It rests upon the assumption that the government is ever willing to discharge its obligations, and that the delay in doing so is not to be attributed to any laches on its part."

This is the only ground of exemption that any of the legal functionaries of the administration have asserted.

Mr. Taney is more full and explanatory. In Thorp's case, (vol. 2, p. 463,) he says: "I am not aware of any statute of the United States that forbids the Secretary of War, or the accounting officers, to allow interest to a claimant, if it should appear that interest is justly due to him. As the United States are always ready to pay when a claim is presented, supported by proper vouchers, it can rarely, if ever, happen that they are justly chargeable with interest, because it is the fault of the claimant if he delay presenting his claim, or does not bring forward the proper vouchers to prove it and justify its payment. But if, in Major Thorp's case, or in any other, the Secretary of War, upon a review of the whole evidence, should be of opinion that interest is justly due to the claimant, I think he may legally allow it." And

he adds: "The fact that the claim is of old standing is not an absolute bar to its payment."

The principle stated here is not only plausible but just; the fact, however, upon which it rests is denied. The "FAULT" is not always in the claimant. As regards this government and these revolutionary claims, is it not the most palpable figment that ever was offered to the understandings of men? Let our statute-books—our congressional records—the lumbering masses of dusty petitions that obstruct the committee-rooms—all bear testimony to its fallacy. The United States have *not* been always "ready" to pay, &c. If they were, why did they not pay?

But in the case of Dr. Baird's heirs the objection cannot arise. The claim has been pressed from its inception to this day with a constancy that only the firmest conviction of its justice could give; and it has been denied.

In the case of Mrs. Hamilton no laches was imputed, although thirty-three years had elapsed before any demand was made. Col. Hamilton retired from service in the same year with Dr. Baird. He afterwards was a member of Congress, and in an executive department during his life. It does not appear that he ever claimed either his half-pay or its "commutation." Many years after his death his widow presented her petition, and, by act of 20th April, 1816, was allowed, and paid, under the opinion of Attorney General Rush, with INTEREST. There were no special words, in the law for her relief, giving interest; but it was considered that the act of March, 1783, embraced her case, and that she was entitled. It also covers the case of Dr. Baird's heirs, as well.

A careful examination of the records will confirm the suggestion of Mr. Conrad, (Appendix to Con. Globe, part 1, vol. 22, p, 626,) and show conclusively, that "from the commencement of the government, the legal advisers of the government had always been in favor of allowing interest."

In the "Compend," (No. 42,) it is shown that interest has been allowed in 1,754 cases. In 54 special acts, nothing is said about interest. But of this number, it is stated, that "19 passed the House with interest, which was struck out, pro forma, by the Senate, to be adjusted afterwards upon some general rule; and that eight of the remaining cases (including Dr. Baird's) have been passed subsequently, on the same principle."

At the 2d session of the 23d Congress, the Senate decided that cases which "had been presented in proper time, and had not been allowed, ought to be entitled to interest."

This claim, then, has EQUITY, JUSTICE and LAW to support it. Equity, from the long and meritorious services of Dr. Baird; justice, from the obligation the people are under to compensate him; and law, because the country, by a public act, had promised to do so.

The questions involved are respectfully submitted, and an early decision is urged. It is said that "hope deferred maketh the heart sick." The surviving sons of Dr. Baird are in advanced years, and have lost much of the buoyancy of spirit that floated them on the waves of life. There are reasons, now, why they are peculiarly anxious to obtain

whatever may be due to them from the country. A deceased brother's children, also, greatly need the share they may be entitled to receive.

The petitioner is happy that this long protracted case is now referred to learned and upright judges, who will investigate its merits, free from the disturbing movements of political strife, and determine finally its truth and validity.

He feels great personal satisfaction, also, that he has not to engage in forensic logomachy with a hired advocate, who, to secure the success of his client, will often endeavor to "make the worse appear the better cause;" and who will employ his talents and ingenuity for the purpose of—

> "Entangling *Justice* in a net of law,
> Fomenting discord and perplexing right;"

but that he has only to meet the fair examination of a high legal officer, to whom is intrusted the interest and the honor of this great nation; and who, while he guards the treasury from the depredations of unprincipled marauders, will do what the people wish him to do—aid the honest claimant in the recovery of his due.

BRIEF OF UNITED STATES SOLICITOR.

The claim is for half-pay, under act of 17th June, 1781, from 29th March, 1781, to 23d March, 1783, and for five years' full pay, and interest.

By act of June, 1836, has received five years' full pay without interest, leaving due, as claimed, half-pay for two years, with interest, and interest on five years' full pay.

It is contended in the brief, that the fact that Dr. Baird was in the service, and was entitled to the half-pay, is established by the act for the relief of his heirs, passed on June 23d, 1836, vol. 6, page 641, as the act provides for the payment of five years' full pay, as commutation for the half-pay for life; and here it is claimed as a legal consequence, that he is entitled to the unpaid half-pay, and with interest, and even interest on the commutation itself, although the act, in express terms, forbids the payment of interest.

It is true the facts recited in the law must be admitted, and therefore we are not at liberty to dispute that Dr. Baird was a surgeon in the regiment of artificers during the revolutionary war. But this regiment, it is admitted in claimants' brief, was not regarded by Congress as embraced within the act above, of January 17th, 1781. (See p. 3 of the brief.) Nor can the argument avail that Dr. Baird was transferred to this regiment during the war, because he was not "reduced," and did not serve during the whole war; and it was only when he was transferred to this regiment that he became a surgeon—he was before a surgeon's mate; and this grade is not included among those who are entitled to half-pay or commutation, for it was only those entitled to half-pay who were entitled to the five years' full pay as commutation. (See resolution of 17th January, 1781.)

The act of 1836, having declared that Dr. Baird was a surgeon to

this regiment of artificers, directs the accounting officers to pay his heirs on that account, and as commutation for his half-pay; that is, for his claim to half-pay.

The claim for interest in this case stands upon a different footing altogether from other revolutionary claims in which it has been allowed, as is sufficiently shown by the history of it, contained in claimants' brief:

1. The right to the half-pay by the officers of this regiment was not regarded by the Continental Congress as falling within the provisions of the resolution of 1781, and consequently they were not entitled to the commutation.

2. The right of Dr. Baird was again and again decided against by the committees of the early Congresses, (see index to private claims,) not, as alleged, because of any deficit in the treasury, but for want of merit in the claim.

The claims on which interest has been allowed are claims of acknowledged obligation which the government was unable to pay, and not as in the case of gratuities.

It may be true, as alleged, that the poverty of the government made the accountants strict in allowing claims, and that therefore only such as were clearly within the provisions of the law were allowed. But it is also true, that the contemporaries of the act knew better than can now be known what were its objects; and where we find that the accountants and Congress concurred in rejecting the claim of Dr. Baird, it is more reasonable to suppose that the partial allowance, which was made in 1836, was rather due to importunity, and to the relaxed care which a full treasury induces, than to any better knowledge of the subject possessed by the committees and Congress of that day than was possessed by the committees, and Congress, and accountants who were contemporaries of the transaction, and who rejected it altogether.

The fact, too, that Congress only recognised him as a surgeon of artificers, and expressly refused to allow the interest, and after having repeatedly rejected the account, shows that what was allowed was allowed as a gratuity; and certainly the court cannot infer, against the letter of the law itself, that Congress recognised any obligation to pay interest.

It is contended here that this is a necessary implication, from the fact that Congress recognised Dr. Baird as a surgeon during the Revolution, and paid him commutation. I have already shown that such an implication is not a necessary one, even without the express interdict against the allowance of interest; but with that it becomes perfectly manifest, that nothing more than a gratuity was intended by the act.

The cases in which interest has been allowed are chiefly on certificates of army agents, or on proof of the loss of such certificates.

(See report on subject of half-pay to officers of artificers, p. 9, vol. "Claims," in State Papers; also pp. 120–'25 in Compend.)

The expression in the report, that the "surgeon" of the corps of artificers commanded by Captain Wyley appears to have been placed on a different footing from the officers, may lead to an attempt to distinguish the surgeons of the regiment from the officers of the regiment.

But the language of the report, and that of the resolutions of May 3, 1782, to which it refers, applies only to Dr. Coskey, who was reduced a year after the regiment, and who, for some special reason, was allowed emoluments allowed to reduced regimental surgeons.

Whether this was construed to embrace half-pay is immaterial, because Dr. Coskey's case was exceptional among the surgeons of artificers who had not been allowed half-pay.

If, as it is probable it was, the object of the resolve of May 3, 1782, was to give him half-pay, it was for some reasons peculiar to him individually. Then, if he had been regarded as an army surgeon, his case was already provided for in the resolve of January 17, 1781. It was not because the corps was not a *regiment* on 3d May, 1782, that this provision became necessary; because the resolve of 1781 does not speak of regimental surgeons, but only surgeons of the army and hospital, evidently contemplating only those in atttendance upon soldiers, and not to such as might be employed for laborers and mechanics in the arsenals or armories, and engaged, says the commissioner's report, in the peaceful occupation of making wagons at Carlisle, in the interior of Pennsylvania, remote from the scenes of danger, and exposed to none of the peculiar hardships incident to war.

Now is there any reason, as a general proposition, which would justify giving half-pay *to* surgeons of such corps, and not to the officers?

By the limitations imposed by the resolutions of Congress of 2d November, 1785, and 23d July, 1787, 4th vol. Journals, pp. 605, 762, and act of Congress of 27th March, 1792, vol. 1, p. 245, this claim was barred when the act of 1836 was passed—another demonstration that it conferred a gratuity.

M. BLAIR.

THOMAS H. BAIRD *vs.* THE UNITED STATES.

Chief Justice Gilchrist delivered the opinion of the court.

The petitioner alleges that his father, Dr. Absalom Baird, was a commissioned surgeon in the army of the Revolution, and in that capacity was entitled by law to half-pay for life and other emoluments.

Whether this allegation be true, is the first inquiry in the case.

It is not denied that he was surgeon of a regiment of artificers, and was discharged from the service, upon the reduction of his regiment, on the 29th of March, 1781.

Whether this corps constituted a part of the army, so as to entitle the surgeon, upon its reduction, to half-pay for life, is a point to be determined by an examination into the manner in which it was considered by the legislative authority at the time, and into the language of the resolution upon the subject.

The resolution of September 30, 1780, provides for "the pay and establishment of the officers of the hospital department and medical staff," and specifies the pay of the director, chief physicians, and surgeons of the army and hospitals, purveyor and apothecary, physicians and surgeons of the hospitals, assistant purveyors and apothecaries,

regimental surgeons, surgeons' mates in the hospitals, surgeons' mates in the army, and steward and wardmaster for each hospital. As Dr. Baird rendered medical services to the United States, and in their employ, in a position, at least, connected with the army, and as this was the only provision for the payment for medical services, and as he was entitled to compensation, he would seem to be necessarily included in the class of "regimental surgeons," particularly if there be anything to corroborate this view of the case.

We think it cannot be denied that Dr. Baird was an "officer;" and the resolution of the 21st of October, 1780, provides that the "officers reduced" shall be entitled to "half-pay for life." This resolution had regard to the reform of the army which was to take place on the 1st January, 1781. Subsequent to this date, on the 17th of January, a resolution was passed, the preamble to which is as follows: "Whereas, by the plan for conducting the hospital department, passed in Congress the 30th day of September last, no proper establishment is provided for the *officers of the medical staff*, after their dismission from public service, which, considering the customs of other nations, and the late provision made for the officers of the army, after the conclusion of the war, they appear to have a just claim to; for remedy whereof, and for amending several parts of the above mentioned plan," it was provided that all officers in the hospital department and medical staff, hereinafter mentioned, who shall continue in service to the end of the war, or be reduced before that time as supernumeraries, shall be entitled to receive during life, in lieu of half-pay, the following allowance, &c. It was then provided that "regimental surgeons" should receive an allowance equal to the half-pay of a captain. It is not at all probable that Congress intended to exclude from the benefit of this resolution the surgeon of the corps of artificers. Still, in order to entitle Dr. Baird to half-pay for life, he must be brought fairly within the class of regimental surgeons by reason of his connexion with this corps. On the 12th of November, 1779, Congress resolved "that the eleven companies of artificers raised by the Quartermaster General be reformed and incorporated and arranged in such a mannner as the commander-in-chief shall deem proper." On the 3d of October, 1780, a resolution was passed providing for the reduction of certain regiments on the 1st day of January then next, and that after that day the regular army of the United States should consist of "4 regiments of cavalry or light dragoons, 4 regiments of artillery, 49 regiments of infantry, and 1 regiment of artificers;" and that the regiment of artificers should consist of eight companies, and each company of 60 non-commissioned officers and privates.

These resolutions appear to us to be entirely conclusive. We do not see how any doubt can remain on the subject. This body of artificers is called a regiment, and is declared to be a part of the regular army. The surgeon of it, therefore, is a regimental surgeon, and if anything more be necessary in order to constitute him such, we are at a loss to understand what it can be.

If these views be correct, as we think they are, when the regiment was reduced on the 29th of March, 1781, the surgeon of the regiment

had a right to half-pay for life, which no subsequent legislation by Congress could, upon any principle of justice or legal reasoning, take away from him. It was a right earned by meritorious services, and conferred upon him in consideration of the sacrifice of his time and his talents for the good of the cause which all had at heart. To say that any subsequent declaratory legislation by Congress, as to the character of this corps, could deprive Dr. Baird of his half-pay to which he was entitled, would be to declare, not only that the precedents which a sense of justice had established in regard to the binding force of contracts might properly be disregarded—not only to maintain that the opinion and interests of one party to a contract might be substituted for the assent of both—but to assert, that notwithstanding all that had been said and done, there was no contract between Dr. Baird and Congress.

But we think that an analysis of the action that has been had upon this subject will show that there has not even been any declaratory law or resolution by Congress, which tends to the conclusion that Dr. Baird was not entitled to half-pay.

On the 19th of March, 1790, General Knox, the Secretary at War, reported a resolution to Congress "that the petition of the late officers of the artillery artificers for the commutation of the half-pay cannot be granted, the United States in Congress assembled having decided against the same on the 19th of October, 1785." He says, that the principles on which the decision was founded will appear by the reports of the late commissioner of army accounts, and a committee of Congress, which he submits.

The report of the commissioner was in consequence of the petitions of John Jordan and Thomas Willey, late captains in the Pennsylvania corps of artillery artificers, for a commutation in lieu of half-pay for life. The substance of the report is, that Congress confined the promise of half-pay to *military* officers only, and that the officers of artificers were not military officers.

It may be remarked of this report, that it does not even by implication controvert Dr. Baird's claim, because it was made in relation to a class of officers to which confessedly he did not belong. No one ever supposed that a surgeon either in the army or the navy was in the strict sense of the word a military officer; and it is not upon that ground that the present claim rests. The duty of a surgeon is to attend upon the sick and wounded, to employ his skill as well upon those who are enfeebled by disease, as upon those who are wounded in battle. The surgeon is no more a military officer when attached to an infantry regiment, than when on duty in the regiment of artificers, and he is as much a military officer in the latter case as when he is on duty at a garrison, or on a recruiting station. We are aware of no reason why Dr. Baird might not properly have been ordered upon any duty which any regimental surgeon might have been required to perform.

The report of the committee of Congress, to which General Knox refers, denies the claim of Captains Jordan and Willey upon the same ground, that they were not military officers, and the same remarks are applicable to it.

General Knox also refers to a former report of his, dated on the 30th of July, 1788, in which he states, that the artificers were a part of the civil branch of the Ordnance department; and also, that when the officers of this corps were commissioned as officers of "artillery and artificers," the manner of filling up the commissions must have been an error, as it was not authorized by any act of Congress." It is true, that there may have been no act of Congress pointing out the manner in which the commissions should be filled up; but it is not so clear that the mode in which they were filled up was unauthorized. His report states, that "the artificers did not in any instance act in the field as artillerists;" but it states, also, that "they were mostly stationed at the arsenal at Carlisle, and employed in making carriages of various kinds for the use of the artillery in the field." It is not, then, a forced construction of their position which induced them to regard themselves as officers of "artillery and artificers," although whether they were properly so regarded or not has no bearing on the present case, as we shall hereafter have occasion to remark.

We are not called upon to decide whether Captains Jordan and Willey were or were not "military officers" in a sense which would entitle them to a commutation of half-pay. Whatever the decision might be, it could not have the slightest effect upon the question whether Dr. Baird was or was not a commissioned surgeon in the army of the Revolution. It may, however, be remarked, that as the resolution of October 3, 1780, provided that the regular army of the United States should consist of certain regiments of cavalry, artillery, infantry, and "one regiment of artificers," it is extremely difficult to understand how anything like logical reasoning can lead to the conclusion that the officers of this regiment, forming a part of the regular army, were not military officers, so as to entitle them to commutation. The "contemporaneous construction" on which stress was laid in the argument, and which led the committee to decide that they were not military officers, is entitled to just so much weight as its intrinsic merits deserve, and no more. Mankind are as competent now to judge of the meaning of words, as they were then; and the executive and military departments of that day did not assume to possess any superior knowledge. There is no more mystery in the acts of Congress passed seventy years ago, than in those of the present day; nor is any greater skill required to construe them. But at any rate, the case of Captains Jordan and Willey has no bearing whatever on the case of Dr. Baird. Their case may be used as an *excuse*, but certainly affords no *reason* for omitting to pay this claim.

For these reasons we are of opinion that Dr. Baird was entitled to half-pay for life, from the time of the reduction of his regiment on the 29th of March, 1781.

The next question in the case is, whether the claimant is entitled to interest.

On the 3d of June, 1784, Congress passed the following resolution:

"That an interest of six per cent. per annum shall be allowed to all creditors of the United States for supplies furnished or services done from the time that the payment became due." No language could be more express or free from doubt than this. It is directly ap-

plicable to the present case. Dr. Baird had rendered services to the United States, for which he was entitled to half-pay for life. His half-pay became due at the expiration of a year from the time of his reduction, and at the end of each successive year thereafter. The resolution was passed from a feeling that it was just and right that interest should be paid from the time the half-pay became due, and it was a voluntary contract on the part of the United States constituting a legal claim against them which no subsequent legislation could release without the assent of the other party. It may be added, that up to the year 1837, there was paid interest on 1,510 claims of widows and orphans, and claims of officers for personal services, the statutes of limitation as to such claims having been suspended.

The proceedings in relation to the claim for commutation do not appear to be very material in relation to the case in its present position. On the 23d of March, 1783, a resolution was passed providing that the officers and others entitled to half-pay for life, "shall be entitled to receive at the end of the war their five years' full pay, in lieu of half-pay for life, in money—that is, specie—or in securities on interest, as Congress should find most convenient." On the 28th of January, 1794, Dr. Baird applied for the benefit of this provision, but died in the year 1805, having, as is said in the report of the Committee of Claims of the 5th of February, 1855, "become wearied and disheartened with delay." In the year 1818, his son, Thomas H. Baird, having become of age, petitioned Congress for relief, and on the 3d of March, 1835, the committee reported that "Dr. Absalom Baird was entitled to the benefit of the provision of the resolution of the 17th of January, 1781, extending the grant of half-pay for life to the officers of the hospital department and medical staff." No action was had upon the resolution until the 22d of June, 1836, when an act was passed granting five years' full pay as commutation, under the resolution of 1783, but without interest.

Now this claim does not depend for its validity upon any admission contained in the act of 1836. But the Congress which passed that act must have considered that Dr. Baird had a legal claim of some kind, otherwise their conduct in granting him five years' full pay was wholly indefensible. It is, however, relied upon as a final settlement of the claim. Upon any principle known to the law, this position is wholly untenable. It is easy enough to declare, *ex cathedra*, that it was a final settlement. But it is extremely difficult to imagine, in the absence of all evidence, what reasons can be urged for holding that the payment of a sum of money is of itself a discharge of a debt for a larger amount. A plea of payment of a small sum in satisfaction of a larger, is bad even after verdict. 2 Parsons on Contracts, 130, and notes. This principle is familiar to ever lawyer. A debt may be paid by a fair and well understood compromise carried faithfully into effect. But here there was no compromise. If it were a case between individuals no one would dream of applying such a term to it. The United States are either bound by principles of law applicable to them, or they are not so bound. If they are not bound, there is an end of the discussion, for then all reasoning is fruitless. If they are bound by the principles of law, it is impossible to regard

the payment of five years' full pay without interest as a satisfaction of this claim. There is no evidence that either party so regarded it, and unless we set at defiance every principle of law, we cannot hold that one party to a contract, without the assent of the other, can discharge his debt by the payment of a smaller sum than the amount due.

If A owes B a thousand dollars by his promissory note, payable in ten years, with interest, and if, when the note becomes due, A pays five hundred dollars on the note, but refuses to pay the remainder and the interest, upon the principle here contended for, the payment of five hundred dollars discharges the debt. Such a proposition, to be refuted, needs only to be stated.

If Dr. Baird was entitled to commutation under this resolution, he should have received either the money or securities, as Congress should find most convenient. They did not find it convenient to pay the money at the time, and of course he was entitled to interest. He asked either for the money or securities on interest, but Congress permitted fifty-three years to elapse after the passage of the resolution, and then gave him merely the sum of $2,400, to which he was entitled in the year 1783. Mr. Ready's report of the 5th of February, 1855, considers only the question whether interest should be allowed on the five years' full pay as commutation from the end of the war, the time when it became due, and the committee decided that interest was due. But as our opinion is that Dr. Baird was entitled to half-pay for life, from the 29th of March, 1781, the matter relating to the commutation need not be further inquired into.

The evidence in the case proves, that Dr. Baird was surgeon of the regiment of artificers from the 20th of March, 1780, and served in that capacity until the regiment was reduced on the 29th of March, 1781. It is admitted by the solicitor, and the evidence proves, that the case does not come within any of the acts or resolutions in the nature of acts of limitation, which required claims to be presented within a specified period, and is not barred by any of them. It is admitted that Dr. Baird died on the 27th of October, 1805; and it is proved that the claimant, Thomas H. Baird, was appointed administrator of his estate on the 9th day of March, 1809.

The amount of Dr. Baird's half-pay was $240 per annum, payable at the end of every year. He was entitled to this sum up to the 27th of October, 1805, the day of his death, and interest on the payments as they became due, according to the express provisions of the resolution of June 3, 1784. There was, therefore, due him at the time of his death the sum of $10,074 84; upon this sum interest is due from the 27th of October, 1805, until the 1st of June, 1856, deducting therefrom the sum of $2,400, paid under the act of 1836, and we report a bill accordingly.

THOMAS H. BAIRD *vs.* THE UNITED STATES.

Judge Blackford's dissenting opinion:

I dissent from the judgment of the court in this case.

The claimant sues as administrator of one Absalom Baird, deceased.

One of the claims is for half-pay for life of the intestate as surgeon in a regiment of artificers in the revolutionary war. The petition charges that the right to said half-pay commenced on the 29th of March, 1781, when the regiment was dissolved, and that said right to half-pay continued until October, 1805, when the intestate died. The other claim is for interest up to the present time on the annual payments of said half-pay as they respectively fell due, the first of which payments is charged to have become due on the 29th of March, 1782.

The claimant's brief states that on the 20th of March, 1780, the intestate "accepted the place of surgeon to Col. Baldwin's regiment of artificers, in which corps he remained until the 11th of May, 1781, when it was reduced, and the officers were discharged." The claim, therefore, originated about seventy-five years ago. The petition contains the following statement: "That by the commutation act passed 23d March, 1783, it was provided that the 'officers' shall have, 'at the end of the war,' five years' full pay in lieu of half-pay for life in money or in securities, &c. (See Document No. 42, vol. 2, for 1837–'38, and Journal, vol. 4, p. 178.) That by this new contract Dr. Baird became entitled not only to the arrears then due him, but also to five years' full pay, being the granted commutation of his half-pay for life; that he was denied the benefit of this substitution. Payment was refused, and after repeated demands and continued efforts with the accounting officers, he at length, on the 28th of January, 1794, presented his petition to Congress for relief. (See House Journal, vol. 2, p. 50.) The case was continued without action by the House until 21st December, 1796, when it was ordered that Dr. Baird have leave to withdraw his petition."

The claimant thus shows that Dr. Baird himself presented this claim to Congress in 1794, when the facts and resolves of Congress relative to the corps of artificers to which Dr. Baird belonged were recent, and were no doubt well understood. The application then failed. In 1790 the claims of the officers of said corps of artificers to half-pay, or commutation thereof, were presented to Congress, when their petition was reported against by the Secretary of War, as follows:

"WAR OFFICE, *March* 19, 1790.

"The Secretary for the Department of War, to whom was referred the petition of Alexander Power and others, late officers of the regiment of artillery artificers, reports:

"That the claim of the late officers of the regiment of artillery artificers for half-pay, or the commutation thereof, granted to the officers of the late army, was several times submitted to the United States in Congress assembled, and received their decision on the 19th day of October, 1785.

"That the principles whereon the said decision was founded will fully appear by the reports of the late commissioner of army accounts and a committee of Congress, both of which are herewith submitted. (Nos. 1 and 2.)

"That the said decision being against the claim of the said officers of artillery artificers, the same was referred to the commissioner of army accounts to take order.

"That the said decision appears to the Secretary of War to have been conformable to the several previous resolves of Congress relative to the object of half-pay, and that the same ought to be final.

"That the petitioners again brought forward their claim to Congress in the year 1788, which was referred to the subscriber, whose report is herewith submitted, (No. 3,) but which was never acted upon.

"The Secretary of War embraces this occasion respectfully to observe that it is of high importance to adhere generally to the decisions of the late Congress on the subjects of claims against the United States.

"That he conceives no judgment of this nature should be reversed but on the most ample proof that the same was formed on a misrepresentation of facts; but that while such judgments are reversed with great caution, constructive judgments, made on previous resolves of Congress, ought to remain fully established.

"That if a contrary conduct should be admitted, the accounts hitherto settled by the United States and by the respective States with individuals would be liable to revision and unlimited confusion.

"That when the abilities, integrity, and liberality of the former Congress be considered, it may be justly presumed that individuals experienced the fairest investigation of their claims, and that upright decisions were formed thereon.

"That with respect to the present petition the Secretary of War is unable to perceive any new facts or circumstances of such a nature as to require a repeal of the former decision of Congress on the subject. He therefore reports the following resolve:

"*Resolved*, That the petition of the late officers of the artillery artificers for the commutation of the half-pay cannot be granted, the United States in Congress assembled having decided against the same on the 19th of October, 1785.

"All which is humbly submitted to the House of Representatives.

"H. KNOX, *Secretary of War.*"

This report of the Secretary of War, and the reports Nos. 1, 2, and 3, to which he refers, are contained in a book called "Revolutionary Claims," pages 120 to 124.

We have then the reports of the commissioner of army accounts and of a committee of Congress, both made in 1785, and a report of the Secretary of War, made in 1790, against the validity of these claims of the officers of the corps of artificers. There is also the fact stated in the petition, that Dr. Baird himself, in 1794, presented a petition to Congress for relief, and that, in 1796, he had leave to withdraw his petition. This construction of the resolves of Congress on the subject, adopted between sixty and seventy years ago, near the times of their passage, and the resolves themselves, satisfy me that Dr. Baird's claim cannot be sustained. But, besides the above facts, there is a decision of Congress of the 19th of October, 1785, referred to in said report of the Secretary of War, Mr. Knox, which is a positive law against all such claims as Dr. Baird's—as much so as an act of the present Congress against them would be. And no court has the

power, after such a law, to allow any such claim against the government. Congress, indeed, may do so, but it is only because Congress can repeal the law.

The order of Congress, in 1796, "that Dr. Baird have leave to withdraw his petition," and the previous adverse action of the accounting officers, put his claim, as a surgeon in the regiment of artificers, to rest for more than twenty years. But, in 1818, after Dr. Baird's death, the present claimant presented the same claim to Congress. There it remained until 1836, when the following act was passed:

"AN ACT for the relief of the legal representatives of Doctor Absalom Baird.

"SEC. 1. *Be it enacted, &c.*, That the proper accounting officers of the treasury be, and they are hereby, required to settle the account of Doctor Absalom Baird, deceased, as a surgeon in the regiment of artificers of the army of the United States, during the revolutionary war, and to allow his legal representatives compensation equal to five years' full pay of a captain of infantry in the service of the United States on continental establishment, without interest; which five years' full pay is the commutation for his half-pay for life; to be paid to the legal representatives of the said Absalom Baird, out of any money in the treasury not otherwise appropriated.

"Approved June 23, 1836." [6 Stat. at Large, 641.]

The five years' full pay of a captain of infantry, which was the allowance made by said act, amounted to two thousand four hundred dollars. See resolution of Congress, May 27, 1778. The claimant admits in his petition that that sum was paid at the treasury under said act of 1836.

The said five years' full pay was paid as a compensation for said services of Doctor Baird. That word compensation, which the act uses, is a very common one. It means recompense, satisfaction, amends. So that the five years' full pay, without interest, was paid and received as a recompense for, or in satisfaction of, the services in question. Again: The act of 1836, after allowing said compensation of five years' full pay, says: "which five years' full pay is the commutation for his half-pay for life." The word commutation there used is derived from the Latin word *commuto*, which means "to give or part with one thing for another."—Ainsworth. In Webster's Dictionary, the word commutation is said to mean "the act of giving one thing for another." Johnson and others give the same definition. Walker's definition of the word commute is, "to exchange; to buy off." Therefore, Congress, by the act of 1836, paid the claimant five years' full pay, *without interest*, in exchange for the half-pay for life; or, in other words, Congress satisfied the claim of half-pay for life, by the payment of five years' full pay *without interest*.

The case, therefore, as regards this act, is this: The claimant applied to Congress for payment of a certain claim of half-pay for life. A law was passed for the claimant's benefit, allowing him a compensation equal to five years' full pay, *without interest;* which five years'

full pay, says the law, is the commutation of the half-pay for life. The claimant afterwards received at the treasury, *under the law and without objection*, the said five years' full pay. The same claimant now demands of the government the same half-pay, *with interest*, before demanded, deducting said sum of twenty-four hundred dollars. My opinion is, that the payment and receipt of said sum of money, allowed the claimant by the act of 1836, is a bar to the present demand, were it otherwise tenable.

I have now shown that Dr. Baird never had any valid claim for half-pay or commutation. He was a medical staff officer in a corps of artificers; and it is as such officer, and as such officer only, that the claim is presented. If he was not such officer, he has no pretension to the half-pay or commutation; and if he was such officer, he had no right to either, because none of the officers of the corps of artificers had any such right. I have also shown that even supposing there had been a valid claim, it is barred by the compromise act of 1836, and the payment and receipt of the money allowed by that act. The claimant contends that, by the act of 1836, Congress intended only to make a part payment of twenty-four hundred dollars on the claim, leaving the balance to be settled by a subsequent Congress. I have no idea that Congress meant any such thing. They meant, as I think is shown in this opinion, that the allowance of five years' full pay, *without interest*, was in exchange for and in satisfaction of the whole demand.

For the foregoing reasons, I dissent from the judgment in this case.

34th CONGRESS, 1st Session. } HO. OF REPRESENTATIVES. { REPORT C. C. No. 24.

GEORGE A. MAGRUDER.

[To accompany bill C. C. No. 11.]

JUNE 28, 1856.

The COURT OF CLAIMS submitted the following

REPORT.

GEORGE A. MAGRUDER *vs.* THE UNITED STATES.

To the honorable the Senate and House of Representatives of the United States in Congress assembled:

The Court of Claims respectfully presents the following documents as the report in the case of George A. Magruder *vs.* The United States:

1. The petition of the claimant.
2. Documents exhibited as evidence in the case, transmitted to the Senate.
3. Opinion of the court, delivered by Chief Justice Gilchrist.
4. Bill for the relief of George A. Magruder.

By order of the Court of Claims.

In testimony whereof, I have hereunto set my hand and affixed the [L. S.] seal of said court, at Washington, this twenty-fifth day of June, A. D. 1856.

SAMUEL H. HUNTINGTON,
Chief Clerk Court of Claims.

To the honorable the Judges of the United States Court of Claims:

The petition of George A. Magruder, a commander in the navy of the United States, respectfully represents: That in April, 1838, he was ordered as a lieutenant to the United States frigate Columbia, Commodore George C. Read, which ship was then under orders for the East India seas. That while on board of said ship, that is to say, from the 18th day of April, 1838, to the 28th day of June, 1840, he performed the duties of captain. He claims to be allowed and paid the difference of pay between that of a lieutenant and the higher grade of captain, while performing the duties of that higher grade.

"An act to regulate the pay of the navy of the United States," approved March 3, 1835, (Stat. at Large, vol. 4, p. 755,) then in force, provided, that "officers temporarily performing the duties belonging to those of a higher grade shall receive the compensation allowed to such higher grade, while actually so employed." Your petitioner presumes that, if while a lieutenant in the United States navy, during the existence of said act, he can show satisfactorily that he performed "*the duties belonging to those of a higher grade,*" he is entitled to "*receive the compensation allowed such higher grade, while actually so employed.*" As evidence that while a lieutenant in the navy he performed the duties of a captain during the time alleged, he presents a certificate, of which the following is a copy, of Commodore George C. Read, who was the commander of the United States East India squadron during that time:

Copy of certificate.

"I certify that Lieutenant George Magruder was senior lieutenant on board the frigate Columbia, from the 18th of April, 1838, to the 28th of June, 1840, during which time I commanded the United States naval force in the East Indies; and I further certify that Lieutenant Magruder stood to me in relation of captain of the Columbia, and actually performed the duties of captain during the period set forth above.

"GEORGE C. READ.

"PHILADELPHIA, *February* 3, 1855."

Your petitioner presented his claim to the Fourth Auditor for payment, and a part of it was allowed and paid, viz: for the time during which Commodore Read was obliged to be absent from his ship, on shore at Macao, pending the crisis which resulted in the war between England and China. The Fourth Auditor admitted this part of the claim, under a certificate of Commodore Read, dated December 7, 1841, and the act of March 3, 1835; but refused for the remainder of the time during which Commodore Read certified that your petitioner "performed the duties of Captain," because the Navy Department had offered to order a captain to the Columbia previous to her sailing, which offer was not accepted.

Your petitioner would further state that the frigate Columbia was entitled to a captain, and a given number of officers and men, and the estimate for a captain was presented to Congress in the estimate at the proper time, and an appropriation duly made.

Subsequent to the refusal of the Fourth Auditor to pay the full amount claimed by your petitioner, to wit, at the 2d session of the 33d Congress, in the winter of 1854-'55, he laid his claim before Congress, whose action, together with the papers then submitted, can be ascertained and examined by reference to the case as it stands in the office of the Secretary of the Senate, and of the Clerk of the House of Representatives.

The records of the Senate show, that on the 13th February last, a bill was reported from the Committee on Naval Affairs, providing for the payment of this claim, which bill passed to a second reading.

The records of the House will show that the claimant presented his case to that body, and that it was referred to the House Committee on Naval Affairs on the 22d December, 1854; that a favorable report, which is cited in a subsequent part of this petition, was prepared by the committee, recommending the passage of the Senate bill. This report was not made to the House, and the case did not, therefore, reach the private calendar. It is, therefore, not among the cases referred by the House to your honorable court.

Your petitioner begs leave to refer to a copy of the report of the Senate Committee on Naval Affairs, viz: Report No. 513, 33d Congress, 2d session, to accompany bill 646. * * * * *

This is not a new or unusual case, but many officers of the navy have at various times during the existence of the act of March 3, 1835, received the difference of pay between that of the grade to which they belonged, and the superior grade, the duties of which they had been ordered to perform. Among the papers on file with the Secretary of the Senate will be found a certificate of the Fourth Auditor, A. O. Dayton, esq., giving "a few of the many officers who have received difference of pay for having performed the duties of a superior grade under the act of March 3, 1835, upon the certificate of their commanding officers," &c.

It is true, that Commodore Read, previous to leaving the United States, applied to the Navy Department for permission to appoint his then first Lieutenant, Pendergrast, an acting *commander* of the Columbia, which application was refused and a captain was offered, which offer Commodore Read did not accept. Lieutenant Pendergrast was at his request detached, and your petitioner ordered in his stead. Commodore Read's non-acceptance of a captain when offered by the Secretary of the Navy, is the only objection urged by the Fourth Auditor against the full allowance of the claim. If this objection be a valid one, it was fatal to the whole claim, and no part should have been paid. But your petitioner contends that it is not a valid objection. The certificate of Commodore Read furnished the evidence, that your petitioner, then a first lieutenant, had, during a certain period specified, performed the duties of captain, and the law of March 3, 1835, unequivocally allows him the difference of pay between the two grades for the whole period.

The House Committee on Naval Affairs, as appears by a written report on file in the clerk's office, after reciting the basis of this claim, and giving the certificate of Commodore Read, dated February 3, 1855, go on to say, that "the committee regarding the certificate of Commodore Read conclusive as to the capacity in which the petitioner performed duty, not only deem the claim just under the then existing law above referred to, but they regard it as an arrearage now due Captain Magruder. Your committee therefore recommend the passage of the Senate bill 646, which provides for his payment."

Your petitioner prays your honorable court will prepare a bill in such form as, if enacted, will effect the object of his petition.

G. A. MAGRUDER,
Commander U. S. Navy.

WASHINGTON COUNTY,
District of Columbia.

On this 12th day of June, A. D. 1855, personally appeared before me, the undersigned, justice of the peace within and for the county above named, George A. Magruder, commander United States navy, who being duly sworn, according to law, did depose and say, that the facts as set forth in the foregoing petition are true to the best of his knowledge and belief.

JNO. D. BARCLAY, *J. P.* [L. S.]

NAVY DEPARTMENT,
January 30, 1855.

SIR: I have the honor to acknowledge the receipt of your letter of the 26th instant, enclosing a memorial of Commander George A. Magruder, of the navy, and asking for such information in relation thereto as the department can furnish for the guidance of the committee.

The enclosed copies of correspondence between the department and Commodore Read will show that Lieutenant Pendergrast, who was, in April, 1838, the first lieutenant of the Columbia, made an application to the department for an acting appointment of the grade for which Commander Magruder now claims pay. This, as will be perceived by the department's letters of April 11, 1838, to Commodore Read and Lieutenant Pendergrast, was declined, and Commodore Read informed that, if he desired it, another captain would be ordered.

On the refusal of his request, Lieutenant Pendergrast applied to be detached, and Commander (then Lieutenant) Magruder succeeded him as first lieutenant.

The memorial is herewith returned.

I am, very respectfully, your obedient servant,

J. C. DOBBIN.

Hon. WILLIAM M. GWIN,
Chairman of Committee on Naval Affairs, U. S. Senate.

U. S. SHIP COLUMBIA,
Gosport, Va., March 30, 1838.

SIR: The undersigned has the honor most respectfully to state that he is at present the senior lieutenant in the navy attached to a sea-going vessel, and that whilst he is performing the ordinary duties of a lieutenant, no less, he believes, than fourteen of his juniors are commanding vessels, enjoying superior rank and receiving higher compensation than himself.

The undersigned at one period flattered himself that the Navy Department would permit Commodore Read to give him an appointment on board of the Columbia; but it appears that he considers himself prohibited from doing so. This prohibition the undersigned can

but regard as bearing with peculiar hardship upon him, when he remembers that within the last three months two of his juniors (Lieutenants Saunders and Slidell) have been placed in command of vessels.

It is probable neither of those officers was appointed by the department; but in the case of Mr. Saunders, his having been ordered to the West India squadron when he was the senior lieutenant, gave him, as a matter of course, the command of the Grampus; and the revocation of Mr. Abbott's orders to the Dolphin secured the command of her to Lieutenant Slidell.

This state of things, as the department may readily suppose, affords the undersigned ample cause of discontentment and complaint, for he is not conscious of having done anything to warrant a disregard of his just claims. He is unwilling, however, to believe that the department would intentionally treat with injustice any officer, though ever so humble in rank, and he therefore asks with confidence for such relief as the department may in its wisdom deem just and proper.

The undersigned has the honor to be, very respectfully, your obedient servant,

G. J. PENDERGRAST,
Lieutenant U. S. Navy.

Hon. MAHLON DICKERSON,
Secretary of the Navy, Washington, D. C.

U. S. FRIGATE COLUMBIA,
Gosport, April 2, 1838.

SIR: Enclosed you will receive a communication from Lieutenant Pendergrast, which he has requested me to forward. By a reference to my letter of the 25th January, you will perceive that I anticipated there would be expectations which I did not feel myself at liberty to gratify.

Being under the impression that nō acting appointment should be made unauthorized by the honorable the Secretary of the Navy, by a commanding officer, without an absolute necessity for it, I made known this opinon to Lieutenant Pendergrast, and told him that as such a case might not occur, he had better have an understanding with the department on the subject.

In the letter above referred to I took the liberty of mentioning the acting appointments made by Commodores Ballard and Kennedy, in the hope that you would perceive the similarity between the cases of Lieutenants Stribling and Pendergrast, both being first lieutenants of ships bearing pennants—both having been long in service, and both having been employed in the same service. I was aware that you would not direct such appointment to be made before sailing; but I confidently expected that you would grant me the same power which was acknowledged by the approval of Commodore Kennedy's act. I am extremely anxious that something should be done in this matter. Dissatisfaction must follow disappointment, and create an unpleasant state of things should Mr. Pendergrast go out with me.

I should be much pleased to have you merely intimate that on leaving the shores of the United States, I might give Lieutenant Pendergrast an acting appointment. * * * *

With great respect, I am, sir, your obedient servant,

GEO. C. READ.

Hon. MAHLON DICKERSON,
Secretary of the Navy.

NAVY DEPARTMENT,
April 11, 1838.

SIR: Your communication of the 2d instant is received.

I cannot authorize an acting appointment as commander to be conferred on your first lieutenant; but if you desire it I shall at once order another captain to the Columbia.

In the case of the North Carolina, to which you allude, this Department has given no sanction to the acting appointment; in that of Lieutenant Stribling the sanction was not given until after the return of the Peacock, and then it was under very peculiar circumstances, not likely soon to occur, that the increased pay was allowed.

I am, respectfully, yours,

M. DICKERSON.

Commodore GEO. C. READ,
Commanding U. S. Frigate Columbia, Norfolk.

NAVY DEPARTMENT,
April 11, 1838.

SIR: In reply to your communication of the 30th ultimo, I have to inform you that I cannot confer on you the acting appointment desired, especially as there are many commanders now in the service unemployed and eager for orders.

I am, respectfully, yours,

M. DICKERSON.

Lieutenant G. J. PENDERGRAST,
U. S. Frigate Columbia, Norfolk.

TREASURY DEPARTMENT,
Fourth Auditor's Office, January 3, 1856.

SIR: The newspaper which I have the honor to enclose contains a decision of the Court of Claims upon an application of Commander G. A. Magruder, of the United States navy, for an allowance of increased pay for having performed, some years since, the duties of a grade superior to his own, which claim was formerly presented at this office and rejected. As the decision of the court was made under

erroneous impressions in regard to the action of this office upon the case, and without an opportunity being afforded it of stating the facts and reasons upon which that action was grounded, and as the decision will probably have the effect of reviving many other rejected claims involving a large amount, I have thought it my duty to bring the subject to your notice.

The case is this: On the 3d of March, 1835, an act was passed regulating the pay of the navy. This act contained the following provision: "Officers temporarily performing the duties of those belonging to a higher grade shall receive the compensation allowed to such higher grade while actually so employed." This law was construed to mean that an officer performing such duties *under proper authority* should be entitled to the increased pay, not that an officer might perform them of his own accord, or under incompetent authority, and then claim the benefit of the act. That would be subversive of the discipline of the navy, and could never have been intended by the legislature. Accordingly, within a few days after the enactment of the law, the accounting officers made and published a regulation requiring as evidence in support of claims to extraordinary pay for having performed the duties of a superior grade a written acting appointment from the Secretary of the Navy, or if such service should be called for while the vessel should be at sea, then such written appointment from the commanding officer of a squadron or vessel on separate service; and pursers were directed to enter and pay officers so appointed in their acting rank from the acceptance of the appointment and commencement of service under it. The written acting appointment as proof of authority, and the entry upon the rolls as proof of service, constituted the requisite evidence. On the 23d of March, 1838, the Secretary of the Navy addressed a letter to this office directing that a greater number of officers on board of a vessel of war than the complement of such vessel should not be paid, the complement of each class of vessels having been previously fixed by the President of the United States. On the 24th of the same month, the accounting officers issued another circular containing the following regulation in reference to the performance of duties belonging to a superior grade: "To authorize payments to acting officers (as such) there must be an acting appointment in due form, corroborated by an entry on the pay and muster rolls, and also a certificate, to be filed with the account from the commanding officer, stating that the officer acting has actually performed the duties of the higher grade (naming it) for the time claimed, and that there was not more than a complement of that grade on board, including the acting officer, during the time he was acting." The rules I have cited were those in force during the time embraced by Lieutenant Magruder's claim. In the spring of 1838, the Secretary of the Navy having placed the frigate Columbia in commission for service on the East India station, and intending her as the flag-ship, ordered Captain George C. Read to join her as her captain, and to serve at the same time as commander of the squadron. This double assignment has frequently been made, and depends upon the discretion of the department. The Secretary likewise ordered to the vessel the officers of other grades required to

make up her complement, including six lieutenants. Commodore Read understanding himself to be the captain of the ship, and not questioning his assignment to her in that capacity, requested the department to give to one of her lieutenants an acting appointment as "commander," which was a grade between those of captain and lieutenant. An officer of that rank not forming a part of the complement of a vessel of the class to which the Columbia belonged, the Secretary refused the request, but offered to datach Commodore Read from the command of the vessel and confine him to the command of the squadron, and to order another captain in his stead. This he declined, preferring to retain the command himself. The department then detached Lieutenant Pendergrast, the first lieutenant of the vessel, whom it had been proposed to make an acting "commander," and ordered Lieutenant Magruder as first lieutenant in his room. The cruise was performed; and upon the return of the vessel, after an absence of two or three years, Mr. Magruder applied to this office for the difference between the pay of a lieutenant and that of a captain for the whole time he had served in her, on the ground that he had performed the duties of the latter grade. His application was backed by a letter addressed to this office by Commodore Read, in which it was stated, not that Mr. Magruder had actually discharged the duties of captain, but that he had "stood in the relation of a captain to him, and should be regarded as performing the duties." My answer to Mr. Magruder was, that not only had he not produced the evidence or any portion of it required by the rules of the office to show that he had performed the duties of captain of the Columbia, but that, under the circumstances of the case as admitted, he *could not* have performed them. Commodore Read had himself been appointed by the department to the command, from which he had never been released, and in the nature of things, as well as by the table of complement, there could not be two captains of the same vessel. As it appeared, however, that Commodore Read had been absent from the ship for five or six months on business for the government, the rules were so far relaxed as to allow Mr. Magruder the difference of pay he asked for that period. The remainder of his claim was rejected. He recently applied to the Court of Claims for the balance of that part of his demand which was refused by this office, and in his petition he stated that "the Fourth Auditor admitted this part of the claim," (referring to the difference of pay for the period during which Captain Read was absent from the vessel,) "under a certificate of Commodore Read, dated December 7, 1841, and the act of March 3, 1855, but refused the remainder of the time during which Commodore Read certified that the petitioner performed the duties of captain, because the Navy Department had offered to order a captain to the Columbia previously to her sailing, which offer was not accepted." And again he says in the same petition; "Commodore Read's non-acceptance of a captain when offered by the Secretary of the Navy is the only objection urged by the Fourth Auditor against the full allowance of the claim." How Mr. Magruder could have fallen into so gross an error I cannot conceive. So far from my urging the declining by Commodore Read of the captain offered him as my only objection to the

claim, I do not think that I was ever aware of that circumstance until I saw it mentioned in his petition to the court. Certainly it had not the smallest influence in my determination of the case. No wonder that the court was at a loss to perceive how the fact was brought to bear upon the question; but I feel mortified that the judges should, without inquiry, have supposed such incapacity on my part as had led me to decide upon so weak, and I may say, so absurd a ground, as that the declining by one person of an offer made to him was a waiver of the legal rights of another. The letter of which I enclose a copy, and which was written to Mr. Magruder in answer to his application, will show, beyond dispute, the reasons by which I was influenced. He was one of the lieutenants of the Columbia, and naught else. He had no order or authority to perform the duties of any other grade, and he never presented at this office a direct certificate of Commodore Read that with or without authority he actually performed the duties of a captain. It was not until the 3d of February, 1855, that such a statement of the Commodore appeared. In the certificate which he gave to Mr. Magruder in 1841, of which I enclose a copy, for the purpose of enabling him to obtain the difference of pay for the period during which he (Commodore Read) was absent from the ship, he admits that he was the commander of the vessel, and after mentioning the necessity of his absence for several months on account of the disturbances in China, he says: "During my detention in China my time was so much occupied with the affairs of our merchants that I was obliged to leave to the senior lieutenant, Mr. Magruder, the performance of the duties of the ship, and he did perform all the duties which a captain would have done had there been one attached to my command." The implication here is about as strong as a positive assertion, that during the time not embraced in this certificate Mr. Magruder did not perform the duties of captain.

On the 26th of August, 1842, a provision was inserted in an act regulating the pay of pursers and other officers of the navy, which directed that whenever an officer should perform the duties of a superior grade by order of the Secretary of the Navy or the commander of a fleet or squadron, or ship acting singly on foreign service, he should receive the pay of the higher grade, but that without such order he should not receive it. This act expressed what was implied in that of 1835, and was of a declaratory character, confirming the construction which had been given to the former act, and the practice which had prevailed under it ever since it was enacted. In any other view such a law, at that time, would have been useless. If every officer who can show that before the passage of the act of 1842 he performed duties ordinarily belonging to a superior grade is entitled, without anything more being required of him, to additional pay, the door is opened to nearly all those whose claims, in the course of seven years, were rejected for non-compliance with the rules so long observed by the accounting officers of the treasury, with the acquiescence of the Navy Department. In that case, if one of the passed midshipmen of the Columbia should chance to have volunteered to perform the duties of an indolent lieutenant, or if a lieutenant should, from politeness to the captain, have relieved him of his duties, or even

a portion of them, he may come in and, with the sanction of law, demand the allowance of the pay assigned to a higher grade than his own without regard to the complement of officers which the Secretary of the Navy saw fit to assign to the vessel, and which, by the regulations of 1818, sanctioned by Congress, and having the force of law, no one but himself had a right to alter. The sum to which Mr. Magruder is entitled, if he is to be considered as having rightfully performed the duties of a captain during the period for which he claims, is $3,830 12, making, together with the sum formerly allowed him by the accounting officers, $4,394 52.

I have the honor to be, sir, very respectfully, your obedient servant,

A. O. DAYTON.

Hon. JAMES GUTHRIE,
Secretary of the Treasury.

GEORGE A. MAGRUDER *vs.* THE UNITED STATES.

Opinion of the court, delivered by Gilchrist, C. J.:

On the 10th of December last, an opinion was delivered in this case, that the claimant was entitled to relief. Since that time we have been favored with the views of the Fourth Auditor of the Treasury upon the question. His letter of the 3d January, containing a statement of certain facts and an argument, addressed to the Secretary of the Treasury, has been forwarded to this court. We have reviewed our decision and re-examined the case by the light thrown upon it by this letter.

The first section of the act of March 3, 1835, (4 Stat., 756,) provides, that "officers temporarily performing the duties belonging to those of a higher grade shall receive the compensation allowed to such higher grade while actually so employed."

By the plain and obvious meaning and words of this act, if an officer temporarily performs the duties belonging to a higher grade, he is entitled to increased compensation. But the act, like all other laws, must receive a reasonable construction. Its meaning is a question of law, and it is to be construed by the same rules, and the same mode is to be adopted, in order to ascertain its intent, which are applicable, and which is adopted, in the case of any other statute. It would be unreasonable to hold that an officer might perform the duties of a higher grade "of his own accord, or under incompetent authority, and then claim the benefit of the act;" or that "if a passed midshipman should chance to have volunteered to perform the duties of an indolent lieutenant; or, if a lieutenant should, from politeness to the captain, have relieved him from his duties," these officers might respectively claim an increased compensation. Such consequences do not follow from a reasonable construction of the act, although that seems to be apprehended by the Auditor in his argument. If an officer actually performs the duty belonging to a higher grade, he is entitled, *prima facie*, to the benefit of the act. If any evidence exists which shows that although he actually did the duty, he performed it under such circumstances as would render it unreason-

able and contrary to the true meaning of the act that he should receive additional compensation, then it should not be paid. The cases supposed by the Auditor would probably be of this character.

It appears from the Auditor's letter, that a few days after the enactment of the law of 1835, "the accounting officers made and published a regulation requiring, as evidence in support of claims to extraordinary pay for having performed the duties of a superior grade, a written acting appointment from the Secretary of the Navy, or if such service should be called for while the vessel should be at sea, then such written appointment from the commanding officer of a squadron or vessel on separate service; and pursers were directed to enter and pay officers so appointed in their acting rank from the acceptance of the appointment and commencement of service under it. The written acting appointment as proof of authority, and the entry upon the rolls as proof of service, constituted the requisite evidence. On the 23d of March, 1838, the Secretary of the Navy addressed a letter to this office, directing that a greater number of officers on board of a vessel of war than the complement of such vessel should not be paid, the complement of each class of vessels having been previously fixed by the President of the United States. On the 24th of the same month, the accounting officers issued another circular, containing the following regulation in reference to the performance of duties belonging to a superior grade: 'To authorize payments to acting officers, (as such) there must be an acting appointment in due form, corroborated by an entry on the pay and muster rolls, and also a certificate to be filed with the accounts from the commanding officer, stating that the officer acting has actually performed the duties of the higher grade (naming it) for the time claimed, and that there was not more than a complement of that grade on board, including the acting officer, during the time he was acting.'"

Now the substantial effect of the act of Congress and the regulation of the "accounting officers," is as follows: The act of Congress provides that if an officer shall temporarily perform the duties of a higher grade, he shall receive the increased compensation. It prescribes no particular mode of proof. Consequently, under the act, any legal evidence is admissible. But the regulation provides that the officer shall *not* be paid unless he produces a *written* appointment. It prescribes a condition not required by the act of Congress. The statute admits any legal evidence, while the regulation excludes it. Now it seems not to have occurred to the Navy Department, or to the "accounting officers," to inquire into the extent of their authority, and to ascertain whether they had the power of legislation to an extent which would authorize them to superadd a condition not required by the act of Congress. It is Congress that is supreme in such matters, and not an executive department, and departmental regulations must be made in subordination to the law of Congress. It is the duty of the departments to administer the law, but it is the constitutional privilege of Congress to enact it. The departments stand, in relation to this matter, upon the same ground with this court, and with the judiciary in general. It is their duty, as it is our duty, to administer the law, and not to make it. The theory of

our government requires that the legislative, the judicial, and the executive departments should be kept distinct from each other. We, like the executive departments, are to administer the law, regardless of the consequences. If an improvident or ill-advised law is passed, neither we nor they have any right to repeal it; nor, whatever may be our private opinions as to its expediency, have we any right to place any obstacles in the way of its full and perfect execution. This is the only safety of the republic, that the law, and that alone, shall be executed according to its simple and obvious meaning. We are aware of the difficult position of, and the responsibility thrown upon, the executive officers. They are the necessary incidents to their position, and their duties are certainly no greater nor more responsible than those of the judiciary. But we have no right, when an act of Congress admits evidence of a certain kind, to decide that we will not render a judgment for a claimant unless he produces evidence of a different kind. We have no power to repeal or modify an act of Congress by a rule of this court; nor can it be done by a regulation of an executive department. We may adopt rules of practice, and the departments may make regulations, but we must each be careful that they are in strict subordination to the law. Wherever there is any antagonism between them, the rules of practice and the regulations must yield, and the law of Congress must govern. But whether the regulation might or might not, under some circumstances, have the force of a law, the practice of the accounting officers is not to regard it as possessing such a validity. It is suspended in its application to individual cases, as the accounting officers think proper. It was suspended in the present case. The Fourth Auditor says: "As it appeared, however, that Commodore Read had been absent from the ship for five or six months on business of the government, the rules were so far relaxed as to allow Mr. Magruder the difference of pay he asked for that period." But the claimant had no written acting appointment. If the regulation was a rule of law, and to be followed as such, the whole claim should have been rejected. That it is not regarded as a rule of law, however, appears from the fact that it is applied or relaxed according to the discretion of the accounting officers for the time being. It needs no argument to show that a regulation, which the accounting officers may regard or not as they think proper, cannot be considered as having the force of law. All that can be said of it is, that the accounting officers enforce it or disregard it, according to circumstances. We may apply to this regulation the remarks made by the Supreme Court in the case of The United States *vs.* Dickson, 15 Peters, 161. It is there said, "the construction so given by the Treasury Department to any law affecting its arrangements and concerns, is certainly entitled to great respect. Still, however, if it is not in conformity to the true intendment and provisions of the law, it cannot be permitted to conclude the judgment of a court of justice. The construction given to the laws by any department of the executive government is necessarily *ex parte*, without the benefit of an opposing argument in a suit where the very matter is in controversy; and when the construction is once given, there is no opportunity to question or revise it by those who

are most interested in it as officers. * * * It is not to be forgotten that ours is a government of laws, and not of men." It cannot surely be asked of the judiciary to give to an executive regulation more binding force than is given to it by the department by which it was made, or to consider it as imperative when it is not so regarded by the department.

The evidence shows that the claimant actually performed the duties of captain of the Columbia, from the 18th of April, 1838, to the 28th of June, 1840. The certificate of Commodore Read is as follows:

"I certify that Lieutenant George Magruder was senior lieutenant on board the frigate Columbia, from the 18th April, 1838, to the 28th June, 1840, during which time I commanded the United States naval force in the East Indies; and I further certify, that Lieutenant Magruder stood to me in the relation of captain of the Columbia, and actually performed the duties of captain during the period set forth above.

"GEORGE C. READ.

"PHILADELPHIA, *February* 3, 1855."

It is admitted that this certificate is genuine, and the Committee on Naval Affairs in the House regard it as "conclusive as to the capacity in which the petitioner performed duty." The argument of the Fourth Auditor is, that Commodore Read has stated, "not that Mr. Magruder had actually discharged the duties of captain, but that he had stood in the relation of a captain to him." If this be the certificate to which the Auditor alludes, Commodore Read states, that the claimant "actually performed the duties of captain." But even if he had not so stated in terms, no other construction could be given to the certificate. If it is said that an individual "stands in the relation of chief justice of the Supreme Court," is any other idea conveyed than that he is chief justice? Such is the obvious and simple meaning of the language.

The act of March 3, 1835, was modified by the 12th section of the act of August 26, 1842, (5 Stat., 536,) which provided that no allowance should be made for performing the duties of a higher grade, unless the officer had been ordered to perform it by the Secretary of the Navy, or the commander of a fleet or squadron, or ship acting simply on foreign service. The effect of this act is merely to require that the order shall have been previously given. It implies, that the order need not have been given by the former act; otherwise, why was the act passed, unless to remedy what was considered as a defect? Nothing is said in it about a written appointment; if Congress had thought that a written appointment was necessary they would have said so. As they said nothing on the point, while legislating upon the subject, it is to be presumed that they did not consider it important.

We see nothing in the case that calls on the claimant to do anything more than to make out his claim by the ordinary rules of evidence. That he has done, and has proved, we think, that he is entitled to relief; and we report a bill accordingly.

AN ACT for the relief of George A. Magruder.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Treasury be, and he hereby is, directed, out of any money in the treasury not otherwise appropriated, to pay to George A. Magruder, a commander in the navy, the sum of three thousand eight hundred and thirty dollars and twelve cents, being the sum now due to him by law, for his services as captain of the frigate Columbia, from the eighteenth day of April, 1838, to the 28th day of June, 1840.

34th CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES. { REPORT C. C. No. 25.

MOSES NOBLE.

[To accompany bill H. R. C. C. No. 12.]

JUNE 28, 1856.
JULY 11, 1856.—Ordered to be printed.

The COURT OF CLAIMS submitted the following

REPORT.

MOSES NOBLE *vs.* THE UNITED STATES.

To the honorable the Senate and House of Representatives of the United States in Congress assembled:

The Court of Claims respectfully presents the following documents as the report in the case of Moses Noble *vs.* The United States:

1. The petition of the claimant.
2. Depositions and other evidence exhibited in the case, and transmitted to the Senate.
3. Claimant's brief.
4. Solicitor's brief.
5. Opinion of the court, delivered by C. J. Gilchrist.
6. Bill for the relief of Moses Noble.

By order of the Court of Claims.

In testimony whereof, I have hereunto set my hand and affixed the [L. S.] seal of said court, at Washington, this 25th day of June, A. D. 1856.

SAM'L H. HUNTINGTON,
Chief Clerk Court of Claims.

To the United States Court of Claims:

Moses Noble, of Portsmouth, in the State of New Hampshire, respectfully represents, that in the spring of 1852 he was agent for and had the management of the following named and described fishing vessels belonging to the district of Portsmouth, to wit:

Name of vessels.	Tonnage	Owned by—	Commencement of voyage.	Termination of voyage.
			1852.	1852.
Brig Good Hope	105 7/95	William Tarlton	May 25	Oct. 20
Schooner Delta	67 82/95	Jeremiah Noble	17	Nov. 10
Schooner Jasper	54 37/95	James N. Tarlton, Jeremiah Noble	25	Oct. 12
Schooner Sardine	48 53/95	James N. Tarlton, Jeremiah Noble	17	Nov. 10
Schooner Five Sisters	47 14/95	James N. Tarlton; Jeremiah Noble	20	10
Schooner Commonwealth	72 24/95	John Yeaton, John Trefethen, and Jeremiah Noble	April 5	10
Schooner Two Brothers	46 45/95	James N. Tarlton, Jeremiah Noble	June 21	10

That in the fulfilment of his duty as the agent and manager of said fishing vessels, and in accordance with the orders of the owners of said vessels, he, early in the said spring of 1852, and before the commencement of the fishing season of that year, engaged masters or skippers for each of said fishing vessels, for the then current fishing season, to engage in carrying on the bank and other cod fisheries; and he caused the master or skipper of each of said fishing vessels, before proceeding on said fishing voyage, to make an agreement with every fisherman employed in each of said fishing vessels, in accordance with the provisions of the first section of "An act for the government of persons in certain fisheries," approved June 19, 1813, and to conform in all particulars with the requirements of said act; and that he then, as agent of the owners, signed an instrument which was supposed to contain said agreement, and that said vessels all engaged for more than four months, (except the brig Good Hope, which so engaged for three months and one-half a month, with a crew of ten men,) during the fishing season of 1852, in the bank and other cod fisheries, and in all respects conformed to the requirements of the act above named, and with the requirements of the act entitled "An act laying a duty on imported salt, granting bounty on pickled fish exported, and allowance to certain vessels employed in the fisheries," approved July 19, 1813. By reason of said several acts of Congress and conformity with the requirements thereof, the owners, masters, and crews of said several fishing vessels became entitled to be paid by the collector of the district of Portsmouth, out of the money of the United States appropriated for such purposes, the following sums—that is to say:

To the owners, master and crew of brig Good Hope	$360 00
Do do schooner Sardine	194 61
Do do do Delta	271 71
Do do do Two Brothers	181 94
Do do do Five Sisters	188 59

To the owners, master, and crew of schr. Commonwealth.	$290 27
Do.....do.....do.....Jasper	217 56
	1,704 68

But when this petitioner applied, on the 31st day of December, A. D. 1852, to the collector of the district of Portsmouth, for the payment of the bounty above specified, said collector refused to pay the same, upon the ground that no log-book of the voyage was furnished to him. This petitioner then applied to the Secretary of the Treasury for redress, who declined to order the bounty to be paid, not because the log-book was not furnished, but because the words "by us" and the words "to be divided among us" were omitted, not in the "agreement" actually made with the fishermen before named, but accidentally omitted in the *instrument* actually signed, and intended to include said agreement.

In order that the court may the more clearly see the grounds upon which the Treasury Department decided that it had no authority, without act of Congress, to order the payment of bounty to which the owners, masters, and crews of said vessels would have otherwise been entitled, the petitioner here inserts a copy of the blank instrument used in reducing said "agreement," made with the crew and fishermen of each fishing vessel, to writing, inserting within brackets the words for the clerical error of omitting which the payment was withheld.

FISHING ARTICLES.

United States of America, District of Portsmouth, A. D. 184 .

It is agreed between the owners or charterers, master or skipper, and seamen of the schooner , whereof is at present master or skipper, now lying in the port of , and to be employed on a fishing voyage or voyages, to commence on the and to end on the 184 , unless said vessel should be previously hauled up by the mutual agreement of the parties to this agreement. That in consideration of one-half of the number of fish and oil, or proceeds of said voyage or voyages after the shoreman's share is deducted, [*to be divided among us,*] in proportion to the quantity or number of fish respectively caught [*by us,*] and oil made, we, the said master or skipper and undersigned fishermen, do agree to, and will perform, the aforesaid intended fishing voyage or voyages.

The said fishermen do hereby promise to obey all the lawful commands of the master or skipper on board said schooner , and faithfully to do and perform the duty of fishermen as required by the master or skipper through the whole of the aforesaid term or fishing season, and upon no account to go on shore, nor to be absent from duty, without liberty being first obtained from the master or skipper so to do; and twenty-four hours' absence without such liberty shall be deemed a total desertion.

In case of disobedience of orders, neglect of duty, desertion, or any other unlawful act, the fisherman or fishermen so offending shall forfeit his or their share or shares of fish and oil, or proceeds of said voyage or voyages, and to pay whatever damages may accrue to the owner or charterer of said schooner in consequence of the offence committed. Said damages to be assessed by referees to be chosen by the parties, from the shoremen in the river.

Time of entry.	Men's names.	Stations.	Time of engagement.	Time of sailing and arriving.

And this petitioner further represents that said several agreements with the fishermen were in good faith, and intended to be, and actually were in exact conformity with said several acts of Congress before named. And all the voyages of said several fishing vessels for the fishing season of 1852 were agreed by and between all parties then to be begun, carried on, ended, settled for, and the proceeds divided in exact conformity with said several acts of Congress, and said voyages of said several vessels were managed and settled and the proceeds divided accordingly. But when said parties reduced their said ageement to writing, they made use of a blank form, which, several years before, had been prescribed by the then collector of the district of Portsmouth, which form for several years previous, and to the year 1852, was in general use in the district, and upon which fishing bounties for several years were paid without objection.

And this petitioner further represents, that neither he nor any other person interested in the voyages of said fishing vessels for the fishing season for 1852 had any knowledge or suspicion that the blanks prescribed by the collector, and so long in use, and used by the masters or skippers in reducing said agreements to writing, as aforesaid, were in any way defective, until notified thereof by the Treasury Department, and after the several voyages of said fishing vessels for the fishing season of 1852 had been settled and the proceeds divided precisely according to the requirements of said several acts of Congress, and in the belief that said agreement so required them to settle and divide the proceeds of said vessels.

The Secretary of the Treasury would not authorize the payment of said claim for $1,704 68, because the instrument in writing did not show that the "*agreement*" was in accordance with the requirements of said several acts of Congress, and because he could not receive any evidence of what the "agreement" actually was, except the instrument signed by the parties.

Because said several acts of Congress were intended by all the parties to be obeyed, and have been obeyed; because said clerical error has been entirely unknown and inoperative between the parties in interest, the object of the law has been accomplished, and, as this petitioner conceives, the rights of the parties which he represents estab-

lished. He claims that a clerical error that was inoperative in defeating the object of the law ought to be equally inoperative in obstructing the claim of these parties.

Wherefore this petitioner prays you to make such orders as will enable him to receive one thousand seven hundred and four dollars and sixty-eight cents, for the account aforesaid, for the benefit of whom it may concern.

MOSES NOBLE,
Agent for the Owners.
W. H. Y. HACKETT,
Solicitor for the Petitioner.

UNITED STATES, *New Hampshire, ss.*

PORTSMOUTH, *June* —, 1855.

Then said Moses Noble made solemn oath that the facts stated in the foregoing petition are true.

Before me, W. H. Y. HACKETT,
Com'r U. S. Circuit Court, District New Hampshire.

PORTSMOUTH, *June* —, 1855.

Moses Noble, who signed the foregoing petition, is duly and fully authorized to prosecute the claim therein described.

JAMES N. TARLTON.
JEREMIAH NOBLE.
JOHN YEATON.
WILLIAM TARLTON.
JEREMIAH NOBLE,
For John Trefethen's share.

IN THE COURT OF CLAIMS.—No. 38.

On the petition of Moses Noble.

The United States do not deny the facts set forth in the petition; but they deny that the petitioners, upon their own showing, are entitled to relief.

1. I claim, if the petitioners in good faith have attempted to conform, and have substantially conformed to the provisions of the acts of Congress referred to, that the claim is established. That the acts of Congress, *quo ad hoc*, amount to a contract on the part of the United States with the petitioners, and that they have fulfilled their part of it.

The requirement that the "agreement" should be "in writing or print," was introduced to protect the rights of the fisherman, and to secure a fair division of the proceeds of the fishing voyages. The government, beyond its functions of protecting the citizens, had no interest in the mode or proportions in which the fish or oil might be divided. If the fish and oil were divided as the law required, and as it was supposed the agreement provided, the object of the law is ac-

complished and the rights of the petitioners established, even if there were a lack of precision in the terms of the agreement, or even if there were a mistake in its form.

2. My next position is, that the form of the agreement actually used is in substance in accordance with the requirements of the statutes. The language of the law is, "and shall also express that the fish, or the proceeds of such fishing voyage or voyages which may appertain to the fishermen, shall be divided among them in proportion to the quantities or number of said fish which they may respectively have caught." 1st sect. act June 19, 1813.

Now, I contend that the above requirement was intended to be complied with by the "agreement" made. It does not admit of any other interpretation than that the fish belonging to the skipper and crew were to be "divided *among them*, in proportion to the quantities or number of said fish which they may respectively have caught."

It is indisputable that the "agreement" provides that one-half of the fish and oil were to be "divided" among those who caught the fish. How can any court give effect to the language of the other clause of the "agreement," "in proportion to the quantity or number of fish respectively caught," without adopting the rule of division required by the before-named act?

The crews could have maintained an action against the owners upon the "agreement," and upon the interpretation which I contend for. A court of admiralty would have decreed a division of the proceeds of the voyages in accordance with the same interpretation.

3. But if this "agreement" will bear an interpretation at variance with the requirements of the law, it is certain that all the parties to it interpreted it and settled by it as if it were in exact accordance with the acts of Congress, and with what they supposed the "agreement" required.

4. Can the government rightfully withhold from these fishermen their share of the bounty, upon the ground that the owners of the vessels in which they served omitted by mistake a requirement intended for the protection of these same fishermen, the omission of which was not discovered by any one until the protection intended had been fully enjoyed? After the "agreement" has effected the object of the law in protecting the fishermen, can the government omit to fulfil its own contract, upon the ground that though the "agreement" was fulfilled, it was defectively drawn?

5. Courts will hold this "agreement" to be in law what the parties in fact intended it to be, and a court of equity would reform the errors.

6. The form or blank used by the petitioners in reducing their "agreement" to writing, was prescribed by the collector of the revenue for this district, and had previously been in use and bounties paid upon it for years. I of course do not claim that this fact binds the government, but, in the equitable view of this claim which this court will take, they will regard it as an indication that the petitioners intended to be right; and if they were wrong, they were misled by an officer of the government whom they felt bound to follow, especially in this matter, and their error was in form, not in substance.

7. If this were a proceeding between two citizens, what answer can be made that would prevail either in a court of law or equity? Will the government, in its own case, withhold what it would compel an individual to pay?

W. H. Y. HACKETT,
Solicitor for Petitioners.

IN THE COURT OF CLAIMS.—No. 38.

On the petition of Moses Noble.—Brief of the U. S. Solicitor.

This is a claim for $1,704 68, for fishing bounties to the crews of certain vessels for the season of 1852, which were disallowed by the collector of the district of Portsmouth, New Hampshire, on the ground that no log-book of the voyage was furnished to him. When presented to the Secretary of the Treasury, on appeal from the decision of the collector, it is alleged in the petition that the Secretary "declined to order the bounty to be paid, not because the log-book was not furnished, but because the words '*by us*,' and the words '*to be divided among us*,' were omitted, not in the agreement actually made with the fishermen before named, but accidentally omitted in the instrument actually signed and intended to include said agreement."

The petition is framed upon the idea that claimant shows himself entitled to the bounties in question, if the objection made by the Secretary of the Treasury be invalid, without showing that he complied with the law on any other point save that drawn in question. He does not, in a word, attempt to set forth how he complied with the law and the regulations issued to carry it into effect, on any other but the disputed point.

It appears by the petition, that the collector excepted to one part of his case, and the Secretary of the Treasury to another part of it; and it might be, if he fully presented it to this court, that other objections might be made. I insist, therefore, that he shall state how he complied with the acts of Congress regulating the subject of the payment of fishing bounties.

Among other particulars besides the tonnage and names of the vessels, and names of their owners, and the agreement made with the fishermen, and the year and season in which the voyages were made, &c., it ought to be stated when—that is, between what dates—the vessels were engaged; that they were engaged exclusively in taking cod-fish at sea; that the master and three-fourths of the crew were citizens of the United States; that the vessels were inspected by the proper officer of the customs, (naming him,) and that he certified to the sufficiency of her outfit according to law; that a regular log-book was kept, containing entries made from day to day; that said log-book was duly presented to the collector; that the owners or agents of the vessels presented also the certificate required of them.

Without such a statement of the case, the court cannot know that the claimant is entitled, although it may not concur in the objections taken by the officers who have passed on the case. If a statement of

the other essential facts which go to form a compliance with the laws be not necessary, it was not necessary to state the fact that the agreement in question was made, or to state anything more than that the owners of certain vessels which were engaged in the cod-fisheries in the year 1852 complied with the laws, so as to entitle them to the bounties claimed. This would not be deemed sufficient, I imagine; but I do not see that the statement of only one fact out of a number equally essential to showing a compliance with the law, will better enable the court to decide upon the claim, than if none of the facts had been stated.

I do not insist upon the necessity of such a statement, however, because I have any doubt of the sufficiency of the objections which appear by the petition to have been made to the claim.

And, first, with respect to the objection made by the collector that no log-book was produced and proved, as required by him, when the claim was presented to him. This evidence was prescribed by the regulations of the Treasury Department, in force at the time the bounties were claimed, and for many years previously, and it has been found a necessary piece of testimony to guard the Treasury from fraudulent claims. The legality of this particular requirement was recognised by Judge Story in the case of the schooner Harriet, forfeited for the false statement made by the agent of the owner to obtain the fishing bounty. (See 1 Story's Rep. 251.)

The general authority of the Secretary of the Treasury to establish regulations proper to carry out the duties devolved on him by acts of Congress, is considered in the case of the United States *vs.* Bailey, 9 Peters, 253. The question arose on an indictment for false swearing, in an affidavit prescribed by regulations of the Treasury, made to carry out the law of 1832, entitled "An act for liquidating and paying certain claims of the State of Virginia." The court say: "It is the duty of the Secretary to adjust and settle these claims, and in order to do so he must have authority to require suitable vouchers and evidence of the facts which are to establish the claims."

It follows that the Secretary had authority to establish such regulations as he deemed proper and necessary to enable him to carry the law into effect. He thought the affidavit a proper and necessary voucher and part of the evidence, and the supreme court held that Bailey could be indicted for making it falsely, although the law did not expressly authorize or require this species of evidence.

The regulation by which the log-book is made a necessary part of the evidence to obtain the fishing bounty depends on the same principle. The Treasury Department is required to pay the bounties under certain circumstances. To ascertain the existence of these circumstances or facts, it prescribes what proof shall be made to its officers, and, among other things, to prove the time during which the vessel has been *at sea*, and the number of fish caught by the respective fishermen—both points of prime importance for the purposes of this law; it requires that a journal or log-book shall be kept, in which these things shall be noted daily. This is plainly requisite to any fair execution of the law, and a failure to comply with the regulation is a defect of proof which cannot be supplied.

2. As to the agreement.

The law (1st section of act of 19th June, 1813, 3 Stat., p. 2) requires that the master or skipper of every vessel engaged in the cod-fisheries "shall, before proceeding on such fishing voyage, make an agreement *in writing or print*, with every fisherman who may be employed therein, (except only an apprentice or servant of himself or owner,) and, in addition to such terms of shipment as shall be agreed on, *shall express whether the same is to continue for one voyage or for the fishing season;* and shall also express, that the fish or the proceeds of such fishing voyage or voyages, which may appertain to the fishermen, *shall be divided among them in proportion to the quantities or number of said fish which they may respectively have caught.*"

The agreement set out in the petition neither expresses whether it is to continue for the voyage or the season, nor does it express that so much of the fruits of the voyage as shall belong to the fishermen shall be divided among them in proportion to the number or quantities of fish taken by each fisherman.

The first omission is not noted in the argument of the counsel. His argument, however, with respect to the last, is applicable to both; that is, that the agreement was properly understood by the skipper and his men, and acted upon as if expressed. That it was not a matter of interest to any but themselves, and as they have arranged it satisfactorily among themselves, the government, which is concerned only in the protection of individuals, should pay accordingly.

It seems to be forgotten that the arrangement in question relates not to money to which these individuals have any meritorious claim, but is a mere bounty of the government, to be paid only according to statutory enactment, in furtherance of a policy which depends for its success on a strict adherence to the terms of the law.

The design in requiring these agreements to be *express* and in *writing*, both as to the *voyage* or *season* for which the shipment was made, and the *terms on which the proceeds are to be divided*, was to define and fix the rights of the parties clearly beforehand, and at the same time to enable the government to supervise their proceedings, and secure the execution of the design for which it pays—of encouraging these enterprises, and particularly in stimulating individual skill and industry, in a pursuit which is found to be the best naval school.

If these laws, and the regulations to enforce them, were required to be observed absolutely by all engaged in fishing, they might be regarded as vexatious, and those called on to enforce them might be pardoned for a disposition to relax their strictness. But, as it is not compulsory upon any one to observe these provisions, and they apply only when the bounty for their observance is claimed, it is the duty of the officers charged with the payment to see that they have been strictly observed; and this court and Congress ought to be chary in destroying any of the safeguards which have been found from experience to be necessary to protect the Treasury.

M. BLAIR.

MOSES NOBLE vs. THE UNITED STATES.

Chief Justice GILCHRIST delivered the opinion of the court.

This is a claim for fishing bounties, amounting to the sum of $1,704 08 upon seven vessels employed in the fisheries in the year 1852.

The petition states the names, the owners, and the tonnage of the vessels, and the date of the commencement and termination of the voyage of each of them; that the claimant, who was the agent and manager of the vessels, before the commencement of the fishing season of 1852, engaged masters for each of the vessels for the fishing season, for the purpose of carrying on the bank and other codfisheries; and caused the masters, before proceeding on the voyage, to make an agreement with every fisherman in accordance with the provisions of the first section of "An act for the government of persons in certain fisheries," approved June 19, 1813, (3 St., 2) and to conform in all particulars with the requirements of said act; and that he then, as the agent of the owners, signed an instrument which was supposed to contain said agreement, and that the vessels all engaged for more than four months, excepting the brig Good Hope, which engaged for three and a half months, in the bank and other cod fisheries; and in all respects conformed to the requirements of the act above named, and with the requirements of the act laying a duty on imported salt, granting a bounty on pickled fish exported, and an allowance to certain vessels employed in the fisheries, approved July 29, 1813, (3 St., 49.)

The first section of the act of June 19, 1813, enacts, that the master of any vessel to be employed in the bank and other cod fisheries shall, before proceeding on such fishing voyage, make an agreement in writing or print with every fisherman who may be employed therein, and shall, in such agreement, express whether the same is to continue for one voyage or for the fishing season; and shall also express that the fish, or the proceeds of such fishing voyage which may appertain to such fishermen, shall be divided among them in proportion to the quantities or number of said fish which they may respectively have caught.

The 8th section of the act of July 29, 1813, (3 St., 52) provides "that no ship or vessel of twenty tons or upwards, employed as aforesaid, shall be entitled to the allowance granted by this act, unless the skipper or master thereof shall, before he proceeds on any fishing voyage, make an agreement in writing or in print with every fisherman employed therein, according to the provisions of the act entitled "An act for the government of persons in certain fisheries."

The 5th and 6th sections of the act of June, 1813, thus referred to, provide for a tonnage allowance to be made to the owners of fishing vessels, but require that the vessels shall have been employed at sea four months at least of the fishing season. The act of March 3, 1819, (3 St., 520) enacts that an allowance shall be paid to fishing

vessels employed in the bank and other cod fisheries, for the term of three and a half months at least of the fishing season. It has been held in relation to these acts, that they include within their terms all vessels engaged in the cod fisheries, without limitation or specification as to the length of their fares, or the nature of their fisheries. (The schooner Harriet, 1 Story's C. C. R., 251.) The sums here claimed are on account of the tonnage allowance which, by the 5th section of the act of July, 1813, is the sum of four dollars for each ton over thirty, in case the vessel is actually employed at sea for four months, and the burden of each exceeded thirty tons. The act of March 3, 1819, (3 St., 520) gives an allowance of three dollars and fifty cents per ton to vessels of such burden, which have been employed at sea for three and a half months. All these vessels were employed at sea for four months, with the exception of the Good Hope, which was employed at sea over three and a half months, and became entitled to an allowance of $360, the act of March, 1819, providing that no allowance shall exceed that sum.

It is contended by the solicitor that, besides the tonnage and the names of the vessels, the names of the owner, the agreement made with the fishermen, and the year and season in which the voyages were made, it ought to be stated in the petition when—that is, between what dates—the vessels were engaged; that they were occupied exclusively in taking codfish at sea; that the master and three-fourths of the crew were citizens of the United States; that the vessels were inspected by the proper officer of the customs, naming him; and that he certified to the sufficiency of their outfit according to law; that a regular log-book was kept containing the entries from day to day; that the log-book was duly presented to the collector; and that the owners or agents of the vessels presented also the certificates required of them.

It is sufficient to say of this position that the claim is founded upon certain laws of Congress, and those are stated in the petition. The other points to which the solicitor refers are all matters of proof; and attached to the deposition of Joseph M. Edmonds, the deputy collector of Portsmouth, New Hampshire, are official copies of certificates signed by Nathaniel R. Folsom, the inspector, that each of the vessels was seaworthy; that they were found in everything suitable for the codfisheries; that the crews were sufficient for the tonnage; that the master and three-fourths of the crew were citizens of the United States; and that in all respects each vessel was fitted for the codfisheries, agreeably to the provisions of law, and that the agreement between the master and fishermen was duly executed by them and the owner or his agent. Edmonds deposes, that each of the vessels was examined by an officer detailed for the purpose; that they were found to be properly fitted for codfishing, according to law and the regulations of the Treasury Department; and that certificates were given, copies of which have been above mentioned. Annexed to his deposition, also, are the original statements of Moses Noble, agent for each of the vessels, of the time of sailing and returning from sea of each vessel, and his affidavit, proving the instrument executed by the fishermen, authenticated by the custom-house seal, and sworn to before the deputy collector at Portsmouth.

An objection was made by the collector to the payment of these bounties, because no log-book was produced before him, as required by the regulations of the Treasury Department. To show that it was competent for the department to require the production of a log-book as a condition precedent to the payment of the bounties, the United States rely on the case of The United States *vs.* Bailey, 9 Peters, 251. In that case the defendant was indicted for false swearing under the 3d section of the act of March 1, 1823, ch. 165, which provides for the punishment of any person who shall swear falsely touching the expenditure of public money, or in support of any claim against the United States. The indictment was for swearing falsely in an affidavit, in support of such a claim, under the act of July 5, 1832, for liquidating and paying certain claims of the State of Virginia. The 3d section directed the Secretary of the Treasury to adjust and settle certain claims for half-pay under that act. It is said by the court: "It is a general principle of law, in the construction of all powers of this sort, that where the end is required, the appropriate means are given. It is the duty of the Secretary to adjust and settle these claims, and in order to do so he must have authority to require suitable vouchers and evidence of the facts which are to establish the claim." Upon this ground it was held that the Secretary was authorized to require an affidavit in support of the claim. It is to be observed that the act of Congress did not prescribe the character of the proof, nor upon what evidence the Secretary should adjust and settle the claim. It was consequently his duty to adopt the appropriate means, and to prescribe the necessary regulations. He might require legal evidence, by which is ordinarily understood evidence under oath. The decision therefore does not apply to a case where the proof has been already pointed out by an act of Congress.

The case of the Schooner Harriet, 1 Story C. C. R., 252, which has been referred to, was a libel of seizure for an alleged forfeiture, charging that the owners of the vessel did, by fraud and deceit, obtain the allowance provided for vessels employed in the fisheries, contrary to the act of 1823, ch. 34. It appears from the opinion of the court, that in order to prove that the vessel was absent at sea for the period of four months, a certificate, purporting to be such a certificate as is required by the 7th section of the act of 1813, ch. 34, was produced and sworn to, and on this certificate the allowance was paid. The certificate stated the particular times of the sailing and return of the Harriet on her different fares, amounting in all to one hundred and thirty-one days. There was, however, an error in the calculation, apparent on the face of the paper, of ten days, so that the whole period of her absence was only one hundred and twenty-one days. The court therefore held that it was manifest that she was not entitled to the allowance on the very face of the certificate, and it was further held that it was fraudulent. To show the manner and the circumstances under which the certificate was made, a witness was introduced, and an almanac, purporting to be the almanac in which the original days of the sailing and return of the Harriet were marked, partly in pencil marks of R. (Return) and S., (Sailing,) and dots in ink against certain days in the almanac, as being the very days of S. (Sailing) and R. (Return.) It was held that this was not in any just sense a journal.

It is said by the court (p. 260) "the true duty of the owner and skipper of these boats and vessels is to keep an exact journal or memorandum of the actual times of being at sea, whether whole days or parts of days, and thus to enable the collector, or other officers of the customs, to ascertain with entire exactness the time passed at sea." This is undoubtedly true, as a matter of convenience, particularly where numerous fares or trips are made in the course of the fishing season. But the remark is not made for the purpose of stating that keeping a journal is necessary in order to entitle the party to the bounty; but it is made for the purpose of contrasting it with the almanac offered in evidence, of which the court say: "The mere marking or mere dotting of an almanac, which might be exchanged or altered at pleasure, would be, and could be no just or sufficient proof of the verity of the marks or dots therein, as expressing the true times. If any document of this sort is to have weight as an original journal or memorandum to repel suspicion or to establish verity, it must be some document which, in its nature or character, like a log-book kept at sea, should contain original entries, made from day to day, and be beyond question a document not made up for a particular purpose afterwards upon general recollections and suggestions of the parties in interest. What I desire to say is, that for the reasons already suggested, the almanac already produced as a memorandum of the times of the sailing and of the return of the Harriet, on her several voyages or fares, is not a satisfactory document to relieve the case from any otherwise well-founded suspicions of bad faith, or fraud, or deceit." Throughout the case no allusion is made to any regulation of the Treasury Department requiring the production of a log-book. Now, when an act of Congress makes it the duty of the Secretary of the Treasury to adjust and settle certain claims, and points out no mode of proving them, as in the case of The United States *vs.* Bailey, before referred to, it may well be that he is to prescribe such rules and modes of legal proof as appear to him to be judicious. But where an act of Congress provides that a sum of money shall be paid upon the production of certain proof, the Secretary cannot superadd to this further proof not required by the act. This would be to give him the power of legislation, and that, too, upon a subject upon which Congress had already legislated. If he possesses this power, so do all the other departments, and so does the judiciary; for it would be equally competent for them to say that they would not consider a claim as valid, unless evidence were produced not required by the act. The 7th section of the act of July 29, 1819, (3 Stat., 52,) enacts, that before the owner of a vessel receives the allowance mentioned in the act, he shall produce to the collector a certificate mentioning the days on which the vessel sailed and returned on her different voyages, and shall make oath to its truth, and certificates in accordance with this provision are among the papers in the case. The inference is irresistible, that upon the production of the certificate the owner is entitled to the allowance; and it is equally clear, that in the opinion of the court in the case of the schooner Harriet, if there had been no fraud in the certificate, nothing further would have been required.

Even if it should be supposed that the production of the log-books

should be necessary before the party could be entitled to the allowance, it is a question whether their absence is not sufficiently accounted for. The log-books of three of the vessels, the Sardine, the Good Hope, and the Delta, are produced and attached to the deposition of Moses Noble. The non-production of the log-books of the remaining four vessels is accounted for by Noble as follows: "In two of said four vessels log-books were kept; in a third the master kept a log-book in an almanac; the master of the fourth vessel could not write, and kept no log-book. The claims for bounties being suspended at the Treasury Department for said alleged informalities in the shipping articles, I paid no attention to the log-books of the four vessels last named, and those which were kept have become lost, and I am unable to find them. One of said masters has moved out of the State, and the present residence of another of them is unknown to me." Now there is no reason why a log-book may not be kept in an almanac, if the times of sailing be denoted with sufficient certainty, so as not to be liable to the objections stated in the case of the schooner Harriet. Nor can we suppose that the misfortune of a master in being unable to write would be punished by his being deprived of the bounty given for the encouragement of the fisheries and seamen, if any reliable evidence could be procured of the times of sailing and returning from other sources.

But the absence of the log-books was not relied upon by the department, and we do not think their production was necessary for the reasons above stated. It is unnecessary, therefore, to determine whether their absence is sufficiently accounted for. The important question presented by the case is that which arises about the construction of the instrument containing the agreement with the fishermen. The claimant, after the decision of the collector in relation to the log books, appealed to the Secretary of the Treasury, who, not considering the question as to the log-books a material one, decided that the agreement was defective.

The first section of the act of June 19, 1813, enacts, that the master of any fishing vessel shall make an agreement with every fisherman, and shall in such agreement express whether the same is to continue for one voyage or for the fishing season, and shall also express that the fish, or the proceeds of such fishing voyage which may appertain to the fishermen, shall be divided among them in proportion to the quantities or number of said fish which they may respectively have caught. The 7th section of the act of July 29, 1819, enacts, that the owner, previous to receiving the allowance made by the act, shall produce the agreement to the collector, and also a certificate mentioning the days on which the vessel sailed and returned on the several voyages or fares she may have made. The 8th section enacts, that the vessel shall not be entitled to the allowance made by the act, unless the master shall make an agreement with each fisherman, according to the act of June 19, 1813. This, it may be remarked, is the only condition precedent, in terms required by the act of Congress. This last mentioned act requires that the agreement shall express whether it "is to continue for one voyage or for the fishing season." The agreement embodied in the petition states, that

the vessel is "to be employed on a fishing voyage or voyages, to commence on the ——— and to end on the ———, 184 ." This seems to be a literal compliance with the act. By this act, also, the agreement is to "express that the fish, or the proceeds of such fishing voyage or voyages which may appertain to the fishermen, shall be divided among them in proportion to the quantities or number of said fish which they may respectively have caught." The agreement produced is expressed to be "in consideration of one-half of the number of fish and oil, or proceeds of said voyage or voyages, after the shoreman's share is deducted, in proportion to the quantity or number of fish respectively caught and oil made." By this agreement the quantity, which in the words of the act "may appertain to the fishermen," is one half the proceeds of the voyage, and the question made is whether this quantity is, by the language of the agreement, to be divided among the master and fishermen in the proportion mentioned in the act. The words "to be divided among us," or words of that import, are omitted; but the agreement is to be so construed that it shall have a meaning, if possible, and that every part shall have its effect. Unless the words referred to are understood, all that follows in relation to the "proportion" is entirely without meaning. Moreover, the agreement expressly provides that one half the proceeds of the voyage shall belong to the fishermen in proportion to the quantity of fish respectively caught. Now, if they were entitled to the proceeds in this proportion, of course the proceeds were to be divided among them in such proportion. We do not think that any further comment on the subject can make the matter more clear than this statement of it.

Our opinion is, that the objection, that the agreement does not show by whom the fish were to be caught, is untenable. No other inference can be made from the agreement than that the fish to be divided among the fishermen were to be the fish caught by them. It certainly did not refer to other fish caught by other persons not parties to the agreement.

It is not necessary to inquire into the question of licenses to these vessels, as the solicitor admits they were licensed, and waives any question on the point. We find the facts proved necessary to entitle the claimant to the allowances prayed for, and we report a bill for his relief accordingly.

34th CONGRESS, 1st Session. } HO. OF REPRESENTATIVES. { REPORT C. C. No. 26.

MARY REESIDE.

JULY 22, 1856.—The Court of Claims made the following report.
AUGUST 8, 1856.—Ordered to be printed.

[To accompany Bill C. C. No. 13.]

To the honorable the Senate and House of Representatives of the United States in Congress assembled:

The Court of Claims respectfully presents the following documents as the report in the case of Mary Reeside, executrix, &c., *vs.* The United States:

1. The petition of the claimant, and the first and second amended petitions.
2. Depositions taken in the case by consent.
3. Documents presented by the claimant, as exhibits in the case.
4. Arguments of claimant's counsel.
5. Brief filed by the solicitor in Thomas Fillebrown's case, and substituted in this case.
6. Opinion of the court, delivered by Judge Gilchrist.
7. Dissenting opinion of Judge Blackford.
8. Bill for the relief of claimant.

By order of the Court of Claims.

In testimony whereof, I have hereunto set my hand and affixed the [L. S.] seal of said court, at Washington, this tenth day of July, A. D. 1856.

SAM'L H. HUNTINGTON,
Chief Clerk Court of Claims.

IN UNITED STATES COURT OF CLAIMS.

MARY REESIDE, executrix of JAMES REESIDE, deceased, *plaintiff*,
against
THE UNITED STATES OF AMERICA, *defendant*. } PETITION.

Mary Reeside, as executrix, as aforesaid, states that her late husband, James Reeside, a citizen of the United States, and domiciled in Pennsylvania, died in Philadelphia on the 3d day of September, 1842, leaving unrevoked, a valid last will, which, afterwards, on the 7th day of September, 1842, was proved and admitted to record in the probate court of said city, and whereof she was, then and there, legally qualified in said court as the nominated executrix, in which capacity

she has ever since acted and still has the sole right to act. Among the assetts of the testator to which she claims title, and for which she may be responsible as a fiduciary, is a demand asserted by him in his lifetime for about $275,000, reduced to $188,496 06 by the verdict of a jury rendered on the —— day of ———, 1841, as will appear from a record herewith filed and hereinafter more particularly noticed. Under the authority of the late act of Congress, organizing this court, she files this petition for obtaining an authoritative judgment for the said demand, or for as much thereof as she may be adjudged to be justly entitled to; and for that purpose, she submits to the court the following facts and prayer thereon:

For many years preceding the year 1836, when his contracts and agency ceased, her testator had been laboriously and faithfully engaged in transporting the mails on a large scale and in—from time to time—also, advancing money and negotiating loans on his own credit, for the use of the Post Office Department of the United States, to a large amount, in the fulfilment of contracts made by him with the Postmaster General. As to which contracts and advances, she has not personal knowledge sufficiently minute and accurate to enable her to make a satisfactory statement in detail, nor does she either know or believe that, at this day, such a statement could be made to this court, or, if made, established by direct proof, oral or documentary. Many witnesses are dead—important vouchers and records were consumed in conflagration of the Treasurer's Office in the year 1833; and still more were destroyed by the burning of the General Post Office building in the year 1836. And, in fact, the records of the Post Office Department had not been properly or accurately made or kept, so as to show the true state of the account, or to afford data for ascertaining it; and especially as to the agency for loans, which were made by the testator, to the amount of several hundred thousands of dollars, and the vouchers for which had chiefly been deposited for settlement in the department, and lost or consumed by fire without any accurate or intelligible memorial, by record or otherwise, of their true character and amounts.

The record, herewith exhibited, will show all on that subject which could be shown as early as 1841, and much more than could now, or ever hereafter, be shown by any species of human testimony. And from these documents she derives most of information concerning the debt she now seeks, at last, to recover by the authorized award of this court, constituted for just such a case. And most of her knowledge also concerning the acts of Congress, and the acts and conduct of the Post Office Department, respecting the contracts and the settlement of the resulting account between the testator and the government. Claiming a large balance in his favor, her testator after demanded a settlement and payment during the year 1836 and since, but was never able to obtain from the Post Office Department or its auditor, either payment or settlement. Under an act of Congress referred to in the record exhibited, two abortive efforts for settlement with the said auditor were made. But these failing, for reasons already herein suggested, no alternative for final adjustment remained except an appeal to Congress or to the judiciary.

The testator claimed a balance due him of about $275,000, and the department claimed against him a balance of about $47[illegible]00. As the government was not then suable, he could not invoke the aid of the judiciary, and intended, as his last and and only resource, to memorialize Congress for justice. But the department had forestalled, and anticipated that resort, by suing him in the circuit court of the United States, sitting in Philadelphia. That suit was instituted against him in the name of the United States, in the year 1839; and was continued in the vain hope of amicable settlement, until October, 1841; when the testator, as defendant, convinced at last that a fair settlement could not be obtained in any other mode, pleaded *non assumpsit*, and a set off of his account, claiming, as aforesaid, a balance against the plaintiff of about $275,000. That issue was at the same October term, 1841, tried by as competent a jury as ever was empanneled in that court. All the testimony which was then attainable, was produced: on the side of the plaintiff alone, eighty-three witnesses had been summoned, and nearly all of them attended and testified. The investigation and arguments in court, occupied about five weeks of the term; and after they retired to make their verdict, the jurors were engaged in the investigation about two weeks. The whole case, in all its aspects and details, was most laboriously, faithfully, and ably investigated; and the court seems not only to have devoted extraordinary care to all the incidents of the trial throughout its entire progress, but to have summed up the whole case in all its ramifications, in a charge to the jury of unexceptionable propriety, unusual copiousness, and rare perspicuity and ability. Under that charge, and on a patient, careful and unusually long consideration of all the facts, the jury found a verdict against the government; and certified, also, on the issue on the plea of set off, that the government justly owed the defendant $188,-496 06. A motion was made by the counsel of the government for a new trial—not because the plaintiff should not be barred, as they admitted it should, but only because they hoped to reduce the balance found in the defendant's favor. That motion, after elaborate arguments, was overruled by the court, in a written opinion of very great length and power; and thereupon a judgment was pronounced in bar of the action; but no formal judgment for execution was rendered on the verdict for $188,496 06, because, *and only because*, the government could not then, as now, be sued, or coerced by execution. Had that Court possessed the authority under which this tribunal will now adjudicate, there can be no doubt that it would have rendered a judgment against the United States for $188,496 06.

After the overruling said motion for a new trial, the United States sued out, or took some steps in suing out, a writ of error to the Supreme court—which said writ of error wassubsequently dismissed, asyour petitioners believe, because the government deemed it fruitless to attempt to prosecute it. The United States *never by any other mode, sought a revision of that verdict, or a reversal of that judgment. Nor did their counsel show, by a bill of exceptions or otherwise, the evidence given on the trial.*

Presuming that there could be no further controversy, and that consequently there would be no longer any resistance, the testator forth-

with demanded of the Treasury Department, payment of the amount so found by the jury to be due him, and the petitioner often demanded it since. But all payment was withheld—why, he could not tell; nor can your petitioner imagine, unless power was substituted for right, under the assurance that no department of the government could be required to do in his behalf anything more than the arbitrary discretion of a despot might dictate.

Having, then, no other resource, the petitioner tried the forlorn hope of an appeal to Congress. But, as has ever been but too common in all such cases, unassisted, as in her case, by accidents peculiarly propitious, and unsupported by the patronage of power, influence, or name, her appeals were not finally disposed of, as the documents pertaining thereto and herewith exhibited will show. Despairing of success before Congress, within any reasonable time, and advised that she might coerce by compulsory process against the Secretary of the United States Treasury, on the 4th day of November, 1848, she filed in the circuit court of the District of Columbia, a petition against Robert J. Walker, then Secretary of the Treasury of the United States, for a *mandamus* compelling him to pay to her the amount assessed by the jury as aforesaid. That court dismissed her petition, and, on an appeal, the Supreme Court of the United States affirmed that judgment on the ground that the government not being suable, no technical judgment had been given for the $188,496 06; and that even had such judgment been pronounced, the sovereign could not be coerced by the subordinate power of any of its courts. She again appealed to Congress, as the documents in relation thereto, and also herewith exhibited, will show. During the session of 1850, her petition was referred to the Committee on Post Offices and Post Roads in the popular branch of Congress. That committee, excepting only their chairman, were unanimous in favor of reporting a bill for appropriating money to pay her the said sum of $188,496 06, *together with six per cent. interest thereon from the date of the verdict.* But the chairman, without giving an opinion, took the papers for further examination, *and never returned them or made any movement in the case afterwards* during the session.

All this she thinks she can prove.

A late act of Congress having wisely provided in this honorable court a *forum* to whose justice and authority she can appeal with hope and confidence, your petitioner presents her case for your consideration and final arbitrament.

She insists that the verdict on the issue made by the government should conclude all further controversy or question as to the facts which were litigated, and should be deemed *record*, and, of course, indisputable evidence of the indebtedness of the United States to her to the amount of $188,496 06, at the date of that verdict.

She insists that the Constitution of the United States, as ordained by the people thereof, for their mutual benefit, and to "establish justice," and the seventh article of the amendment thereto, which established more fully the right of trial by jury in matters of dispute, and forbids that any "*fact*," so tried, "shall be otherwise re-examined in any court of the United States, than according to the rules of the

common law," are, in both spirit and principle, applicable to her cause, and fully guarantee to her the amount ascertained in favor of her testator; and for the government to deny, or longer withhold the same, would be a denial of that "*justice*" which is pledged to every citizen; an arbitrary violation of her rights, and a virtual violation of the Constitution itself.

She insists and charges that her testator did all in his power to obtain a fair and honorable settlement with the government; that he tried long and earnest to get the government to state his account—to furnish him with the documents which pertained to the same, and meet him upon an equitable basis of adjustment; but his most reasonable requests were disregarded. The government, exercising its most arbitrary discretion, selected its own course of action, and after a protracted and vexatious delay, set up a most unreasonable and unjust demand in its favor, and instituted said suit, which was conducted with all the vigor its immense influence and patronage could afford, leaving no resource unexhausted to establish its own, and invalidate her testator's claim; that to this end its numerous officials and ample means were actively employed. Having finally failed in its purpose, after a most thorough investigation, she insists that it would be oppressive, as well as subversive of the plainest principle of right, to deny to her testator, and herself, the fullest benefit of the investigation thus had.

She insists, also, that she is equitably entitled to interest on the amount so found in her favor, to be computed from the finding. The amount was liquidated and fixed—it was due under contracts for money. Had the government paid her husband, as it ought, his estate would have had the use of the money of which the government wrongfully deprived it; and the government, consequently, had used his money, and enjoyed the profit. Moreover, she insists that, on these grounds she has precisely the same right to both interest and principal.

Had the government been suable as a natural person, she is advised that her right to interest would have been as legal and indisputable as it is reasonable and morally just; and she is advised to say that the only plea the government could ever have made against the payment of interest, was that it could not, against its will, have been compelled to pay even the principal. But, being now compelled to pay her what it owes her, and the interest, as an incident, she claims as much right to the interest as to the principal.

She is advised, also, that when the government might have done as it ought to do in regard to both principal and interest, it was accustomed, in such cases as hers, to pay interest when it paid principal; and she refers to the case of Stockton and Stokes—15th Peters—as analagous, on that point, to her case, *with the exception in favor of hers, of the fact that in the other the government had not chosen to submit, as in hers, to the umpirage of a court and jury, chosen by itself.*

She states that the entire right to said judgment or demand against the government, as aforesaid, vests in her as executrix and sole devisee of James Reeside.

Wherefore, she respectfully submits this her humble petition to

this honorable court, and earnestly prays for a judgment for the sum awarded to her testator, as aforesaid, and interest thereon from the date of the award; to both of which she insists she is entitled, according to the true intent, spirit, and meaning of the Constitution of the United States, as a compact between the government and the citizen, and according to the established legal and equitable jurisprudence of the land.

STATE OF PENNSYLVANIA, } *ss.*
City and County of Philadelphia, }

Mary Reeside, upon oath, states that the matters and facts alleged in this her petition are true, so far as stated, from her own personal knowledge, and the statements made upon information from others she believes to be true.

IN UNITED STATES COURT OF CLAIMS.

Amended petition of Mary Reeside, executrix, &c., of James Reeside, versus the United States.

MARY REESIDE, executrix of JAMES REESIDE, deceased, *plaintiff*, *against* THE UNITED STATES OF AMERICA, *defendant*. } AMENDED PETITION.

Mary Reeside, as executrix aforesaid, makes this amendment to her petition heretofore filed, and for a more specific recital of the matters and things that transpired touching the verdict in favor of her testator since the rendition thereof, in obedience to the rules prescribed by this honorable court, says:

That in her former petition she attempted to state that a writ of error was sued out by the United States, after the overruling of their motion for a new trial, by the judges who presided at the trial of the cause. She is now able to state that such writ of error was sued out, but that the United States wholly failed to prosecute it, but kept it pending, as they seemed likely to do for an indefinite period, as an obstruction to the action then being taken before Congress by her testator, to procure an appropriation for the payment of the judgment in his favor. This verdict was rendered on the 6th day of December, 1841, in ample time to have had any bill of exceptions, or other matters of error, if any they could have presented worthy of the attention of the Supreme Court, so as to have been disposed of at the first, or at least the second, term of the court then afterwards convening; but no such matters of error being assigned or presented, nor any likelihood that there would be within any given time, her counsel (her husband in the mean time departed this life) perceiving no other action probable, but that vexatious and oppressive delay which had then been indulged to a most ruinous extent by subjecting her deceased

husband's estate to the greatest sacrifices, in order to meet and liquidate the heavy liabilities incurred in his lifetime in raising and procuring funds to take up many of those drafts, and advances made for the government—which formed the basis of the verdict—deemed it proper, and her right, that the writ of error not being prosecuted, the cause should be docketed and dismissed under the rules of the Supreme Court, which was done. She states that no writ of error, with proper exceptions, was ever prosecuted or presented to the court, nor has there ever been any matter which could amount to a writ of error presented in any shape, even to this day.

In part support of the matters she now alleges, she herewith presents a copy of a letter addressed by Mr. Whittlesey, as Auditor of the Post Office Department, to the Judiciary Committee, on the first of August, 1842; (another letter addressed by him to said committee she has not been able to find.) And she also presents a copy of a letter addressed by R. S. Coxe, her counsel, to the same committee, assigning reasons why the said writ of errors was dismissed, as stated.

"AUDITOR'S OFFICE, P. O. D.,
"*August* 1, 1842.

"SIR: Your letter of the 20th instant to the Postmaster General, enlosing the petition of James Reeside, and certain documents relative thereto, was duly received, and referred to this office.

"I found it stated in the petition that 'no writ of error has been prosecuted to review' the decision of the circuit court in the case of Mr. Reeside; and as I was aware the counsel for the United States were of opinion that there was ground for a writ of error, not only in the final charge of the judge, but in certain decisions made in the course of the trial; and as I had received a report a few days before from the district attorney upon the subject of post office suits generally, stating that this case had been carried up to the Supreme Court, it appeared necessary in order to ascertain the facts more certainly, to address a letter to Messrs. Read and Cadwalader, the counsel of the United States, upon the subject. From the former gentleman I have received a reply, stating that he has just issued a writ of error, which will bring the exceptions taken, with the whole record, before the Supreme Court.

"In this condition of the case, differing, in an important particular, from the understanding of the petitioner, and, I presume, from your own, I do not know whether it would be the pleasure of the committee to enter into the investigation; I therefore submit the subject, through you, for their consideration. If the committee deem it proper to take the case up as it now stands, and during the present session of Congress, I shall be happy to furnish any documents, and to give any information in my power which may be required for that purpose.

"I have retained copies of the petition and documents, and herewith return the originals, as requested.

"I am, very respectfully,
"E. WHITTLESEY, *Auditor.*

"Hon. C. J. INGERSOLL,
"*Of the Committee on the Judiciary, Ho. of Reps.*"

"FEBRUARY 17, 1843.

"DEAR SIR: Allow me to return my thanks to you and to the Judiciary Committee, for the opportunity of reading and making some remarks upon the letter of Mr. Whittlesey to you under date of the 13th instant.

"Mr. W., in the course of this letter, makes some remarks in which my name is connected, and which may bear the construction of being designed to cast an imputation upon me personally and professionally. Whether such was the intention of Mr. Whittlesey it is of no material consequence to me to inquire; but lest such an impression may be made upon the honorable members of the committee, and others who may see this letter, I beg leave to lay before the committee a brief statement of the facts:

"I was employed by Mr. Reeside as one of the counsel in his case, which was tried in Philadelphia in the autumn of 1841. The trial began in October, and the verdict was rendered December 6. My engagement as such counsel then terminated, and I had no further interest or concern in it, than, as I had not received my fee for my services, I was desirous of obtaining payment of the judgment which was rendered in favor of defendant.

"In the spring of 1842, Mr. Reeside, then in Washington, again employed me as his counsel to aid him in procuring an appropriation from Congress to pay the amount of this judgment. I accordingly drew up the memorials which were presented to the two Houses, but which were not finally acted upon by either, in consequence of its being stated by the auditor of the department that a writ of error was sued out, or designed to be sued out, to bring the case before the Supreme Court for review. Up to the month of December, however, nothing was done in prosecuting this case. During the summer Mr. Reeside died, and no application was made on behalf of the family to take any measures in the case; and having no personal acquaintance with Mrs. Reeside, and knowing that she was perfectly at liberty to employ any other agency, I thought it improper for me to address her on the subject.

"In the month of December last, Mr. John M. Clayton came to Washington, exhibited me his full authority in the matter, and again employed me to aid in doing what was right in the case. I informed him of the circumstance which had arrested the action of Congress at the last session, viz: the letter of Mr. Whittlesey on the subject of the writ of error; and that so long as this writ continued in our way, we could not hope for the favorable action of Congress. As to the mode of disposing of that writ of error, we had our choice of measures: either to produce ourselves, under this writ, a full copy of the record, to docket it, and, as there was no bill of exceptions, the judgment would be affirmed, as a matter of course, when it should be reached. As, however, there were already more causes on the docket of the Supreme Court than could possibly be disposed of during the ensuing term, this course would necessarily involve a day of another year. The other course open to us was under the rules of the court: if the plaintiff in error did not file the record within a certain time after the opening of the court, the defendant is at liberty to have a proper certificate from the circuit court filed, and the cause docketed and dismissed. It was

finally determined that Mr. Clayton should procure such certificate; and, should the United States not prosecute the case as the law required, that I should on the first motion day apply to the court to dismiss the writ of error. It was accordingly done on the first Saturday after (motion day) after the papers came to hand.

"As to the allegation that Mr. Cadwalader and Mr. Read came to Washington on this business, and the gratuitous assumption that both these facts were known to me, I will only remark, that I did not hear, until the week after Mr. Cadwalader had left town, that he had been in Washington; and that on Friday, the 20th January, hearing that Mr. Read was in the city, I sent by a friend an invitation to come to my house, but learned the following morning that he had returned home the preceding evening. So much for the facts and the intimation applied to me by Mr. W. I may further observe, that if those gentlemen did come to Washington on this business, if courtesy made any requirement at all, it was that they should apprise me of their wishes and intentions. Certainly, had I known them to be in Washington, and the object of their visit, it would in no degree have changed my course of conduct. I should have proceeded precisely as I did.

"Mr. Whittlesey further says, that he has done everything incumbent on him to hasten the preparation of the case for the decision of the Supreme Court; if anything has been done beyond ordering the writ of error, which was postponed from the time the judgment was rendered until the month of August, when the other party, exhausted by delay, had applied to Congress for relief. This motion accomplished its only purpose; it did arrest the action of Congress; and having accomplished that, the business was again allowed to sleep, and from that sleep it probably never would have been resuscitated if the memorial had not again been presented to Congress praying for relief. It is again attempted to stop the action of Congress, not by any further action, but by an intimation that the office still remains dissatisfied with the decision of the circuit court, and is not disposed to regard the case of Mr. Reeside as judicially closed. I can only say, that if the memorialists is to wait until that office is satisfied, the day will be endless. There is, however, at this time, fourteen months after the trial, no suit pending, the judgment is absolute, unless very peculiar privileges, which no citizen can claim, are to be extended to the United States. No bill of exceptions can now be signed, and no writ of error prosecuted with any prospect of success.

"As to the causes assigned by Mr. Whittlesey, I can only say that they have been thrown out purely at random.

"1 'Judge Baldwin left the bench before the adjournment of the court.' Yes, he did. He sat on the bench of the Supreme Court, but he returned from Washington in March, sat in the circuit in April, May, &c., decided the motion for a new trial; and his absence during the winter furnishes no other reason for the non-preparation of the exceptions than would have been supplied by his having, ten years before, been out of the city of Philadelphia.

"2. The death in the family of Mr. Cadwalader occurred about the beginning of November, 1840, weeks before the trial was concluded; and Mr. C., after that event, returned to the court, and for weeks took

part in the trial. That event, therefore, had no more connexion with this delay than the death of Julius Cæsar.

"3. The death of Judge Hopkinson, which occurred as early as February, 1842, months before the argument and decision of the motion for a new trial. This circumstance could no more operate upon this case to produce the delay in the preparation of the papers from April term, 1842, till this date, than the death of General Cadwalader, a few months earlier.

"So much, then, for these reasons why the United States have delayed the preparation of the bill of exceptions in this case for a period which would, between individuals, forever preclude them from any further proceeding in the case. This apology indicates, somewhere or other, to whomsoever it may be attributed, an equal disregard of duty to the public, whose interests were to be protected, and of the rights of the citizen, who is entitled to justice, and to prompt and speedy justice. If this case had been duly urged it might have been docketed during the last winter. Should it even now be brought up, it is not practicable to have it decided during even the next term. Two years more must elapse even if the past negligence should be followed by future diligence. But who can answer for that? So that, judging from the past, we shall have to wait the five years allowed parties to sue out their writ of error.

"I beg you to excuse the length of this letter, but I could not, in justice to myself and client, say less.

"Very respectfully, yours, &c.,

RICH'D S. COXE.

"Hon. C. J. INGERSOLL"

She states that after the verdict of the jury, and the motion for a new trial was overruled, her testator waited till about the middle of July, 1842; and having, in the mean time, urged the government all in his power to proceed with their writ of error which was threatened to be prosecuted, but finding no positive steps taken, he determined to memorialize Congress for relief, and hence did so on the 18th day of July, 1842. No action was then taken, because of the letter addressed to the committee above stated. During that year her husband died, and in December following she, as executrix, presented her further memorial, which was again checked by a further communication from Mr. Whittlesey, which elicited the letter from her counsel, Mr. R. S. Coxe, above presented to the court. She states that she has, from that time henceforth to the present, been incessantly memorializing every Congress at every session in hopes to get her rights—save, when worn down and disheartened, she was advised and did try a writ of *mandamus* in the year 1848; and for that purpose, her attorney in fact, the honorable M. St. Clair Clarke, made a formal requisition on the Secretary of the Treasury for the full amount of said verdict, with interest, and received an answer declining her demand, as will appear by the following correspondence:

"MARCH 29, 1848.

"SIR: The records of your office will show, or ought to show, that a suit was brought by the United States of America, in the circuit court of the United States in and for the eastern district of Pennsylvania, in the third circuit, at its November term, eighteen hundred and thirty-nine, against James Reeside, to recover an alledged balance due by him to said United States, amounting to the sum of thirty-two thousand seven hundred and nine dollars and sixty-two cents, arising out of certain contracts with the United States through the Post Office Department.

"That subsequently, to wit, at the December term of said court, holden in the year eighteen hundred and forty-one, the said suit was regularly tried, and that the jury to whom the issues therein were legally submitted, found the said issues in favor of the said James Reeside, and duly certified to said court that the United States were indebted to the said James Reeside in the sum of one hundred and eighty-eight thousand four hundred and ninety-six dollars and six cents.

"Thereupon a motion for a new trial was made on part of the United States. This motion was regularly heard, considered, disallowed, and overruled by said court. Whereupon, by said court, judgment was rendered upon the aforesaid verdict for the sum aforesaid, in favor of the said James Reeside; which judgment remains in full force, and is in no part satisfied, annulled, or reversed.

"Said James Reeside afterwards, to wit, on the third day of September, eighteen hundered and forty-two, died in the city of Philadelphia, having previously made his last will and testament, therein appointing and constituting Mary Reeside, his wife, sole executrix, as per exhibit herewith of an exemplification of said will and letters testamentary.

"And now the said Mary Reeside, executrix as aforesaid, demands to know whether, according to what she is instructed to consider the laws regulating and governing the treasury of the United States, and of course the bounden duty of the Secretary of the Treasury, the amount of the aforesaid verdict and judgment has been entered on the books of said department to the credit of her testator, James Reeside, aforesaid; and if the said credit has not yet been entered on said books, she demands, as executrix aforesaid, that said credit shall, under the verdict and judgment aforesaid, be so entered; and further, now demands from the said Secretary of the Treasury payment of the full amount of said verdict and judgment, with six per centum per annum interest until this present demand, and until the same shall be ultimately paid.

"Your answer hereto is most respectfully requested.

"MARY REESIDE, *Executrix, &c.*

"*By her counsel and attorney,*

"MW. ST. CLAIR CLARKE.

"Hon. ROBERT J. WALKER,

"*Secretary of the Treasury of the United States.*"

"TREASURY DEPARTMENT, *March* 30, 1848.

"SIR: Your letter of the 29th instant has been received, and, in reply, I have to state that your request cannot be complied with.

"I am, very respectfully, your obedient servant,

"McC. YOUNG,

"*Acting Secretary of the Treasury.*

"M. ST. C. CLARKE,

"*Counsel and attorney of Mary Reeside, executrix, &c.*"

Her application for the benefit of a mandamus having failed, your petitioner again returned, with her hopes sickened and prostrated, to the Halls of Congress, and pursued again the path of her former supplications, and to taste again of her bitter disappointments and denials, and the tedious delays and shifting of her prayers and petitions from one committee to another, without any definite result, but invariably terminating their action at the point where they began, till she is forced to feel that justice she cannot get, unless she shall happily find rescue in this honorable court.

She here presents the memorial of her husband, as obtained from the Journals of the House of Representatives, with the matter as further pursued by herself, and the various manœuvres and references made by Congress in relation to it.

Extracts from the Journals of the House of Representatives.

MONDAY, *July* 18, 1842.

Mr. Charles J. Ingersoll laid on the Clerk's table, under the order of the House of March 29, a memorial of James Reeside, which represents that he was, for a long series of years, a contractor for the transportation of various mails of the United States; that he received from the head of the Post Office Department, at various times, special commissions and agencies, all of which he executed; that in the performance of these duties, he spent a large portion of his best days; that his accounts with the Post Office Department became necessarily extensive and complicated, in consequence of the variety, number, and multifarious character of his duties; that he relied implicitly on the department to keep these various accounts with method and accuracy; that he possessed no means of preparing a formal and distinct statement of the indebtedness of the United States to him; that, when the account was made out by the department, he was shocked and astonished to find that a balance was claimed against him; that from the books and papers of the department, he was enabled to exhibit an account which showed a large balance in his favor; that a suit was instituted against him in the circuit court of the United States for the eastern district of Pennsylvania, for the purpose of a final settlement, which suit was finally decided at the last October session of that court; and that the jury, after six weeks' continued labor and a most thorough examination of the case, in which every latitude was allowed to the government in the introduction of testimony, returned a verdict in his favor for the sum of $188,426 06, under a charge from the court

that directed them to examine, with strictness of accountants, every item in controversy.

The memorialist further states, that though this award is far short of what he believes to be due to him, it is yet final and conclusive against him; and he, therefore, entertains the confident hope and belief that the United States will yield entire acquiescence to this judgment. He prays Congress to direct its immediate payment.

The said memorial was referred to the Committee on the Judiciary.

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(See Journal of the House of Representatives, second session, twenty-seventh Congress, page 1110.)

THURSDAY, *December* 22, 1842.

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By Mr. Charles J. Ingersoll: A petition of Mary Reeside, widow and executrix of James Reeside, deceased, praying the payment of a certain judgment obtained by her late husband against the United States, for one hundred and eighty-eight thousand four hundred and ninety-six dollars and six cents, which petition was referred to the Committee on the Judiciary.

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(See Journal of the House of Representatives, third session, twenty-seventh Congress, page 85.)

SATURDAY, *December* 16, 1843.

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By Mr. J. R. Ingersoll: The petition of Mary Reeside, of the city of Philadelphia, executrix of James Reeside, deceased, praying for the passage of an act directing the payment to her of the amount, with interest and cost, of a verdict recovered by her deceased husband against the United States.

Ordered, That the said petition be referred to the Committee on the Judiciary.

(See Journal of the House of Representatives, first session, twenty-eighth Congress, page 59.)

THURSDAY, *February* 15, 1844.

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Mr. Wilkins, from the Committee on the Judiciary, made a report upon the petition of Mary Reeside, of Philadelphia, executrix of the late James Reeside, deceased; and it was—

Ordered, That the said committee be discharged from the further

consideration of the subject, and that the said petition and report be referred to a select committee;

And Mr. C. J. Ingersoll, Mr. J. P. Kennedy, Mr. John Stewart, Mr. Henley, and Mr. Milton Brown, were appointed the said committee.

(See Journal of the House of Representatives, first session, twenty-eighth Congress, page 400.)

THURSDAY, *February* 15, 1844.

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By Mr. Charles J. Ingersoll: A memorial of Mary Reeside, executrix of the last will and testament of James Reeside, deceased, for permission to present evidence in support of a claim by her late husband against the general government; which was referred to the select committee on this subject.

(See Journal of the House of Representatives, first session, twenty-eighth Congress, page 406.)

THURSDAY, *June* 13, 1844.

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A message from the Senate by Mr. Dickins, their Secretary.

Mr. SPEAKER: The Senate have passed bills of the following titles, viz:

No. 99. An act for the relief of Mary Reeside, executrix of the last will and testament of James Reeside, deceased.

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(See Journal of the House of Representatives, first session, twenty-eighth Congress, page 1097.)

FRIDAY, *June* 14, 1844.

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Bills and resolutions from the Senate of the following titles, viz:

No. 99. An act for the relief of Mary Reeside, executrix of the last will and testament of James Reeside, deceased.

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Were severally read a first and second times and referred.

No. 99. To the Committee on the Post Office and Post Roads.

(See Journal of the House of Representatives, first session, twenty-eighth Congress, page 1117.)

FRIDAY, *February* 28, 1845.

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By Mr. Joseph R. Ingersoll: A memorial of Mary Reeside, of the city of Philadelphia, and State of Pennsylvania, executrix of James Reeside, deceased, referring to her two former memorials, and praying that Congress will make such disposition of her case as may seem just; which was referred to the Committee on the Judiciary.

(See Journal of the House of Representatives, second session, twenty-eighth Congress, page 532.)

MONDAY, *January* 6, 1845.

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A message from the Senate by Mr. Dickins, their Secretary.

Mr. SPEAKER: The Senate have passed a bill (No. 22) entitled "An act for the relief of Mary Reeside, executrix of the last will and testament of James Reeside, deceased," in which I am directed to ask the concurrence of this House.

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(See Journal of the House of Representatives, second session, twenty-eighth Congress, page 174.)

SATURDAY, *January* 11, 1845.

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Bills from the Senate of the following titles, viz:

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No. 22. An act for the relief of Mary Reeside, executrix of the last will and testament of James Reeside, deceased.

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Were severally read a first and second times and referred.

No. 22. To the Committee on the Post Office and Post Roads.

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(See Journal of the House of Representatives, second session, twenty-eighth Congress, page 201.)

WEDNESDAY, *December* 10, 1845.

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By Mr. Charles J. Ingersoll: A memorial of Mary Reeside, of the city of Philadelphia, praying the attention of Congress to her memorial heretofore presented, and speedy action upon her claim; which was referred to the Committee on the Post Office and Post Roads.

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(See Journal of the House of Representatives, first session, twenty-ninth Congress, page 74.)

WEDNESDAY, *December* 31, 1845.

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By Mr. McIlvaine: The memorial of Mary Reeside, of the city of Philadelphia, and State of Pennsylvania, executrix of James Reeside, deceased—heretofore presented February 28, 1845; which was referred to the Committee on the Post Office and Post Roads.

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(See Journal of the House of Representatives, first session, twenty-ninth Congress, page 177.)

MONDAY, *February* 11, 1850.

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By Mr. Levin: The petition of Mary Reeside, widow of James Reeside, deceased—heretofore presented December 31, 1845.

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(See Journal of the House of Representatives, first session, thirty-first Congress, page 499.)

MONDAY, *April* 29, 1850.

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By Mr. Phelps: The petition of Mary Reeside, executrix of James Reeside, deceased, praying for an act directing the payment to her of the amount certified by a jury to be due to her late husband.

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Ordered, That the said petitions and joint resolutions be referred to the Committee on the Post Office and Post Roads.

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(See Journal of the House of Representatives, first session, thirty-first Congress, pages 858, 860.)

THURSDAY, *December* 11, 1851.

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By Mr. Robbins: The petition of Mary Reeside, widow of James Reeside, deceased—heretofore presented February 22, 1845.

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Ordered, That the said petitions be referred to the Committee on the Judiciary.

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(See Journal of the House of Representatives, first session, thirty-second Congress, page 80.)

FRIDAY, *March* 5, 1852.

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On motion of Mr. McLanahan, by unanimous consent,

Ordered, That the Committee on the Judiciary be discharged from the further consideration of the petition of Mary Reeside, and that the same be referred to the Committee on the Post Office and Post Roads.

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(See Journal of the House of Representatives, first session thirty-second Congress, page 432.)

THURSDAY, *July* 8, 1852.

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Mr. Olds, from the same committee to whom was referred the petition of Mary Reeside, administratrix of James Reeside, deceased, made a report thereon, accompanied by a joint resolution (No. 21) for her relief, which was read a first and second time, committed to a Committee of the Whole House, made the order of the day for to-morrow, and the joint resolution and report ordered to be printed.

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(See Journal of the House of Representatives, first session, thirty-second Congress, page 872.)

OFFICE HOUSE OF REPRESENTATIVES UNITED STATES,
November 1, 1855.

I hereby certify that the foregoing nine pages contain true extracts of the proceedings of the House of Representatives upon the case of Mary Reeside, widow of James Reeside, from the Journals of the House of Representatives.

Attest: W. V. McKEAN,
Chief Clerk Office Ho. Reps. U. S.

IN THE HOUSE OF REPRESENTATIVES, JULY 8, 1852.

Read twice, and committed to a Committee of the Whole House to-morrow.

Mr. OLDS, from the Committee on Post Offices and Post Roads, reported the following joint resolution:

JOINT RESOLUTION

For the relief of Mary Reeside, administratrix of James Reeside, deceased.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the Auditor of the Post Office Department be authorized and required to audit, settle, and

adjust the claim of Mary Reeside, administratrix of James Reeside, deceased, for services as mail contractor for the Post Office Department, from the year eighteen hundred and thirty-two to eighteen hundred any thirty-five, inclusive, upon the principles of law and equity, and the decisions and practice of the Post Office Department at the time the contracts were made; and that he be invested with the usual power of courts at law, to compel the attendance of witnesses before him upon the investigation of the case; and that the Secretary of the Treasury be authorized and required to pay to the said Mary Reeside such sum as may be found due to her by said Auditor, on her executing an acquittance of all demands against the United States on account of services rendered by the same James Reeside as mail contractor.

She refers to the above record to show that neither her testator, in his life time, nor herself since his death, have omitted anything that could possibly induce Congress to act definitely upon the subject. It shows that he and she have supplicated and petitioned as often as it was in their power to do so, until it has become to her a source of mortification to dwell upon it in any shape. Nor would she further humble herself before the tribunals of her government, at whose hands she has been dealt with so harshly and unjustly, did not pressing necessity for her own support, as well as those for whom she feels a moral responsibility as well as solicitude, demand it at her hands; but that the task has long since become painful. Her government has never taken any notice of her prayers nor her rights, nor has it even instituted any proceedings to ascertain any supposed or pretended demerits or wrong in the verdict rendered by its own court and jury in favor of her testator; but to resist his, and then her application has been its constant aim, which have been effected under influences which she verily believes, and might state, but feels too weak to attempt to make them good by proof against so powerful an adversary.

She states she has been much pained to learn that grave charges of fraud—and that, too, in the absence of any proof—have been most gratuitously insinuated against her testator since his death, by those who have deemed it proper to shield the bad faith of her government, as well as the selfish policy of others, at the expense of his good name, when death intervenes his presence to meet the foul aspersion. And she is equally pained to be advised that the transactions of her testator should have resulted in causing others entrusted with high and responsible duties connected with the government and the administration of the laws, to be likewise impugned with fraudulent practices, when they, nor any of them, could have had any motive to perpetrate a wrong for the benefit of her deceased husband. And that, too, after the fullest investigation, instituted and carried to the utmost extent by the government, before one of the highest tribunals of its own creation; and after those functionaries have also departed this life, and not able to answer for themselves.

She states that the conduct of the government has operated most oppressive and ruinous to her testator's estate, as well as herself. He was forced, at the instance of the government, to defend an onerous

suit prosecuted against him, in which he was compelled to incur a most burdensome expense, in fees, costs, and lost of time; that since his death the heavy encumbrances created to raise means for the benefit of the government have been forced to collection at a great sacrifice of valuable property, till she now is reduced to a most miserable pittance of an income, not sufficient to provide for her an independent support, while the government withholds her means and substance without remorse.

Considering the premises, she is advised to say, in addition to what she has before pleaded, that it was and is the legitimate intendment of the constitutional compact of these States, as ordained and sanctioned by the "people," to *protect*, and not *oppress* the citizen; and that to "establish justice," and not *perpetrate wrong*, is the object of its creation; and that among its cardinal provisions, *trial by jury* in *civil causes*, as explained by those and their compeers who created it, is not denied or prohibited by any letter or clause of that sacred instrument or subsequent enactment, in cases where *facts* are to be investigated; that in the suit against her testator such investigation was proper, and was resorted to by the government itself. And that for it now to offer to disregard the finding of such jury is an oppressive exercise of arbitrary power nowhere delegated, and only to be found in usurped implication and perversion of the true meaning of the Constitution to sanction a violation of right.

She is advised to say, that though her testator could not have sued the government, that when the government chose to sue him, and subject him to an onerous and expensive defence, in its own courts, before a jury of its selection, the finding of such a jury, if to bind her testator as to the matters contested, must bind the government also; and that all assumptions to the contrary is to vest the government as plaintiff with privileges over the citizen as defendant, offensive to the genius of a free people, derogatory to the dignity and integrity of "*jury trials*," and based upon no other sanction than arbitrary power.

She is advised to say, that the language of the Constitution of these United States, touching the trial by jury in civil causes, is only *silent*, and *not prohibitory*; that it does not *specify* as to *persons*, but applies *to all who may sue*; that the government *has* the power to *sue*, and as such *suitor*, is to be bound by the same rules which bind the citizen whom it may be please to make defendant. And that the 7th article of the amendment, which was the offspring of the objections made to the 2d section of the 3d article of the Constitution, was designed in its prohibition to "*re-examine*" facts tried by a jury—to apply to *all suitors*—and hence to the *government*, as well as the *citizen*; and that to construe it to the contrary would be to *obliterate the amendment itself*; that its enactment could not be to hinder one citizen from devouring or oppressing another, *as citizens*, but that the government should not, nor any favorite suitor by the government's sanction should so oppress a citizen as to disregard the finding of "*facts*" by a jury, or "otherwise re-examine the same," "than according to the rules of the common law."

She is advised to submit whether the Constitution of the United States does, or can, warrant the government in the assumption of

power to subject her testator to an onerous trial by jury, from whose verdict he nor she can derive any possible practical benefit; but that whilst her testator would have been precluded by the finding of said jury, the government may force her to a re-examination of the same facts, thereby vesting itself with the privilege of two examinations, whilst her testator or herself can have by such forced construction but one, from which any benefit can result to them.

She is advised to say, that the issue made and joined between the government and her testator was the disputed *debits* and *credits* of the account stated; that the jury was sworn to try that issue *in whole*, and not *in part;* and that it was proper and legitimate to plead and prove as offset any and all matters that had been properly *presented* and *rejected* by the accounting officers of the government; that no matters were allowed or plead as set-off which had not been so *presented* and *rejected* by the government, and that it was the province and duty of the jury to consider, and *allow* or *reject* the same, according to the testimony, in the rendition of their verdict, which they did; and that by virtue of the *statute, admitting such matters to be so pleaded*, they were properly considered by the jury, and that their finding is *conclusive* as to every *item* embraced in it.

She is advised to say further, that the government is compelled, by usage in such cases, as well as in common justice, to allow her interest upon the amount of the verdict from its rendition; and that to deny or withhold interest in such a case as hers, would be to assume that the government may make a *forced loan* of the citizen's substance—for an indefinite period, without compensation—which would be a most alarming usurpation of right.

Inasmuch as there was, at one time, an assignment of the verdict in favor of her testator to one John Gray, which was afterwards vacated by other arrangements, she files herewith a copy of a transcript from the United States circuit court for the eastern district of Pennsylvania, showing said judgment to be fully reinvested in her as executrix and devisee aforesaid:

TRANSCRIPT.

In the circuit court of the United States for the eastern district of Pennsylvania, in the third circuit, of October session, 1839.—No. 13.

THE UNITED STATES OF AMERICA
vs.
JAMES REESIDE.

Mark the verdict and claim in this case in favor of James Reeside, to the use of Mary Reeside, executrix of the last will and testament of James Reeside, deceased, in pursuance with articles of agreement, dated February 11, 1854.

APRIL 25, 1855.

DANIEL KINGSBURY,
Adm'r of the estate of John Gray, by letters of administration granted by the register of wills, of Philadelphia, dated Aug't 29, 1851.

To GEORGE PLITT, esq.,
Cl'k C't C't U. S.

UNITED STATES OF AMERICA, } ss.
Eastern district of Pennsylvania, }

I, George Plitt, clerk of the circuit court of the United States for the eastern district of Pennsylvania, in the third circuit, do hereby certify the foregoing paper, signed "Daniel Kingsbury," to be a true and faithful copy of the original on file and remaining of record in my office.

In testimony whereof, I have hereunto subscribed my name and affixed the seal of the said court, at Philadelphia, this fourth [SEAL.] day of June, A. D. 1855, and in the seventy-ninth year of the independence of the said United States.

GEORGE PLITT, *Clerk C. C.*

Relying upon the principles of right and justice, she confidently hopes for a prompt decree from this honorable court for the full amount of the verdict in favor of her testator, with interest thereon, as in her former petition she has solicited.

IN THE UNITED STATES COURT OF CLAIMS.

MARY REESIDE, Executrix, }
vs. } *Second amended petition.*
THE UNITED STATES. }

The petitioner, Mary Reeside, states that in her original and amended petition, heretofore filed, she alleged, among other facts, that the heavy indebtedness incurred by her husband and testator in his lifettme had so greatly involved his estate as to cause the whole of it to be swept away after his death, to in part liquidate the same. That the principal portion of it was covered by heavy mortgages, and the portion which was not so encumbered was soon pursued by execution, upon judgments rendered and passed to the hands of others, at a great sacrifice, under the sheriff's hammer. She states, that after his estate was exhausted, there still remained unliquidated the following judgments and demands, as is shown by the certificate of the clerk of the district court for the city and county of Philadelphia, thereto annexed, to wit:

John Knox and al.	M.	36,534	Meredith	July 2, 1836,	$5,411	79
P. S. Rowland	J.	38,484	H. M. Phillips	August 6, 1838	356	44
Mechanics' & Tradesmen's Loan Co.	D.	38,096	D. S. B.....	Jan. 28, 1839	2,400	00
Jonathan Ashton	M.	39,104	D. S. B.....	April 13, 1839	271	37
V. Worthington	J.	39,563	Tyson	July 6, 1839	4,570	19
John Ward & Co.	J.	39,459	Price.....	July 20, 1839	5,366	81
Girard Bank	J.	39,874	Jack	Sept. 2, 1839	1,255	50
Girard Bank	S.	39,062	D. S. B.....	Sept. 16, 1839	3,676	86
C. J. Ingersoll	D.	39,060	D. S. B.....	Nov. 21, 1839	40,000	00

Eaton & Gilbert	D.	391,122	Hanna	Jan. 2, 1840	475	92
David Dorrance	M.	40,282	D. S. B.	May 22, 1840	30,000	00
Jacob Levering	J.	40,450	Bradford	June 30, 1840	163	17
P. S. Rowland	J.	40,270	H. M. Phillips	Sept. 8, 1840	179	57
A. Curcier	M.	401,169	Hart	Dec. 10, 1840	5,441	33
Wm. G. Marshall	M.	41,304	J. Campbell	April 16, 1841		
Charles J. Ingersoll	M.	41,257	D. S. B.	May 17, 1841	11,000	00
James McClure	S.	41,111	D. S. B.	Oct. 20, 1841	2,717	20
C. J. Ingersoll	D.	401,034	E. Ingersoll	Nov. 9, 1841	5,500	00
H. J. Levis	D.	41,305	Henderson	Dec. 27, 1841	468	73
Benj. Field	J.	42,433	Guilloû	June 25, 1842		
George W. Tryon & al	D.	39,704	Fallon	April 16, 1841	771	03
Bank of United States	J.	421,583	Brooke	April 17, 1844	9,701	90

I certify the above judgments are of record in the district court for the city and county of Philadelphia, against James Reeside.

[L. S.] D. A. ALLISON, *Prothonotary.*

Wm. T. Dougherty & Co	J.	43,244	T. D. Smith	May 26, 1843	$438	00
Farmers' and Mechanics' Bank	M.	44,471	F.W. Hubbell	Dec. 19, 1845	5,596	75
Simon Stuckey	M.	46,214	Pultè	June 21, 1847	431	00
Rebecca Nathans	J.	48,814	B. H. Brewster	March 27, 1849	189	95

I certify the above judgments are of record in the district court for the city and county of Philadelphia, against Mary Reeside, executrix of James Reeside, deceased.

[L. S.] D. A. ALLISON, *Prothonotary.*

She states that the whole of these judgments, with very slight exceptions, were founded upon debts and demands created for money borrowed by her testator, which was applied in his negotiations and advances for the use of the government, or material and stock for transporting the mails. But her information is, that much the larger part of it—indeed all but a small portion of it—was for actual cash advances to meet and liguidate the protested or deferred post office drafts.

She further states that her husband, from 1816 till 1836, was engaged in no other occupation but carrying the mail, and transacting business for and with the Post Office Department. That, at the time the Hon. John McLane left the department, when it passed to the supervision of the Hon. William T. Barry, her testator was in independent and prosperous circumstances, being the owner of a handsome and appreciating property, to which he subsequently added, previous to his becoming involved for the benefit of the Post Office Department, and which would have left herself and children in affluent circumstances had it not been swept away as before stated. That said estate so sacrificed is now worth the larger part of a million of dollars, in the hands of those who hold it—all, or the larger portion of which could have been retained by her, had the government not withheld from her the amount which it justly owed her testator; even to the extent as ascertained by the inquest had, and verdict and judgment rendered, by the court and jury.

She further states, that all the judgments rendered and unpaid necessarily bear interest, which has now swelled to an amount to swallow up the principal sum of the verdict, and still leave her impoverished and helpless, unless she is allowed interest on the judgment from the date of its rendition, according to the rules and usages of law, to which she claims she is justly and legally entitled, if for no other reason than because she is, and has been, compelled to pay in-

terest on all those sums of which the government has reaped the full and exclusive benefit.

She states, also, what in her former petitions she omitted to state, that those alone who could testify to the facts of her testator's transactions with the government, are either dead or beyond her reach. The testimony of the Rev. O. B. Brown, who was the treasurer, and privy to the whole of the moneyed dealings of her husband for the benefit of the department, is dead, as will appear by the certificate of that fact hereto annexed. The other witnesses who testified on the trial are also, some of them, dead, as she is informed, or, if living, their whereabouts is unknown to her.

COUNTY OF WASHINGTON, }
District of Columbia. }

Personally appeared before the undersigned, a justice of the peace, duly qualified and acting as such, in and for the county and district aforesaid, Dr. William V. H. Brown, who, upon oath, states that he is the son of the Rev. O. B. Brown, formerly the treasurer and chief clerk of the Post Office Department of the United States; and also further states, that his father, the said O. B. Brown, departed this life on the 2d day of May, 1852; and further saith not.

WM. V. H. BROWN.

Sworn and subscribed to before me this 7th day of June, 1856.

JOHN S. HOLLINGSHEAD, *J. P.*

She states, also, that she is in possession of none of the papers or vouchers which were used at the trial, but has been informed, and believes, that when the case was tried, and the jury rendered their verdict, the agents and counsel of the government took charge of all the papers, drafts, and other documentary evidence adduced at the trial, with the view and for the purpose of preparing their motion for a new trial, or to prepare exceptions upon which to ground a writ of error; and that neither her testator in his lifetime, nor she since his death, has ever seen or been in possession of any part of the same. She therefore alleges that no evidence could now be adduced to explain the voluminous and complicated transaction of her testator with the Post Office Department, save such as might appear from the imperfect condition of its records, which were not sufficient, at the period of twenty years ago, to give a just or correct exposition of the matter.

She further states, that at the death of her husband she was possessed of a small property, held by herself, so set apart when he was believed to be solvent and independent; but that when his estate was swept away, as before stated, she, not wishing to deprive any creditor of his just demands against her testator, has from time to time disposed of and appropriated the proceeds of the little property she so held, as far as it would go, in the payment of the same. She did this, not only because her feelings prompted her to do so, but also because she could not conceive that the government would not, at an early day, pay her the full amount of the verdict and judgment in her favor, which would have still placed her in easy and independent circumstances. But the

arbitrary course of neglect pursued by the government has not only left her in utter destitution, save as to a small fragment of an income not the half of an independent support, but which pittance is now being pursued by some of those who hold judgments, and may at an early day be taken from her, or, if not so, its enjoyment must ever be jeopardized by the presence of any execution ready to seize upon it.

In view of these facts, she submits whether there is any known principle of law or justice which can now drive her into a re-investigation of those matters so thoroughly contested, and settled by the verdict and judgment in her favor.

She is also advised that the acts of 1825 organizing the Post Office Department, under which the service of her testator with the government was performed, and none of which was done by virtue of any contract with the United States direct, but with the Postmaster General; and also the act of 1836, which was "An act to change the organization of the Post Office Department, and to provide more effectually for the settlement of the accounts thereof," under the 17th section of which the suit against her testator was specifically authorized to be brought to settle his said account with the said Department—confer, as a necessary legal consequence, the right and duty of the court and jury to adjudicate the whole case, and the right of her hnsband to plead and prove his part of the account; and that the verdict and judgment rendered thereon is strictly and technically conformable to law, which she pleads, and submits accordingly.

She also submits, how can she receive "justice" or "compensation," as provided by the Constitution, for the loss she has sustained, unless she be allowed interest upon the verdict and judgment in her favor, as hereinbefore prayed?

She invokes the speedy action of this court, in order to save her from the incessant litigation and harassment to which she is subjected in consequence of the numerous executions, or writs of *scire facias*, which are constantly being issued to make or revive the judgments standing against her as aforesaid; and further prays, as in her former petitions she has prayed.

STEWART, COXE, &c.

Deposition of John McLean, taken before me, one of the Commissioners of the United States Court of Claims for the State of Ohio, this fifth day of November, A. D. 1855, *to be read in evidence in the case of Mary Reeside, executrix of James Reeside* vs. *United States.*

John McLean, of lawful age, being by me first duly sworn to tell the truth, the whole truth, and nothing but the truth, deposes and says: That his name is John McLean—his occupation, Judge of S. C. U. S.—his residence, Cincinnati, Ohio; that he has no interest, direct or indirect in the claim which is the subject of inquiry, and that he is not related to the claimant.

1st question.—Were you, or were you not, acquainted with James

Reeside deceased, formerly contractor under the United States Post Office Department for the transportation of the mail? If yea, please state fully when and how long you so knew him, and under what circumstances, or relations, if any, your acquaintance with said Reeside was founded.

1st answer.—To the first interrogatory I answer, that James Reeside, during the whole time I was Postmaster General, was a contractor to carry the mails of the United States, and the greater part of the time he was one of the largest contractors in the Union, if not the largest; and in point of energy and faithfulness, he was not surpassed or I believe equalled, by any contractor in the Union. I considered him as standing at the head of all other contractors. I found him just and honorable in all his dealings with the Post Office Department. There was no man to whom I could confide an important duty in mail transportation, requiring uncommon energy, with the same confidence as to Reeside.

2d interrogatory.—State fully your knowledge of said Reeside, as to his business habits and capacity in the matters, if any, in which you knew him to be engaged, and his integrity as a man, and his fidelity in the discharge of his duty.

2d answer.—In answer to the second interrogatory, I say, Mr. Reeside was not an educated merchant. He had no accurate knowledge of book-keeping; but in transporting the mail, and in all matters relating thereto, he stood at the head of the mail service in the United States. From an intimate knowledge of him for six years, under very large contracts, I found him honest and upright, and ever ready to sacrifice his own interest to the advancement of the public service.

3d question.— State whether or not in your transactions, if any, with said Resideе, and your observation of his conduct in the discharge of his business duties, or any trusts that you may have confided to him, you ever had any reason to believe or suspect him guilty of dishonesty, fraud, or want of fidelity. Or did you ever, at any time, see or know any act that could cause you to impeach said Reeside's honor or honesty any way. Please answer to the best of your knowledge or belief in this behalf.

3d answer.—In my answers to the first and second interrogatories, I have substantially answered the third, but I will more specifically say, that I found Reeside faithful to the trusts committed to him, and exemplary in the discharge of his duties to the public. I never suspected his honesty or found him guilty of fraud, or wanting in fidelity to the public or the department. The conduct of all the contractors was strictly watched by me, and they were aware that a severe judgment would follow any delinquency. When I wanted a man of the highest energy and faithfulness, I selected Reeside for the service.

After I left the department in 1829, my intimacy with Mr. Reeside ceased. I only saw him occasionally, but I have ever held him in the highest estimation for the energy he showed in sustaining the department while I was connected with it.

JOHN McLEAN.

STATE OF OHIO, }
Hamilton County, } ss.

On this fifth day of November, A. D. 1855, personally came John McLean, the witness within named, and after having been first sworn to tell the truth, the whole truth, and nothing but the truth, the questions contained in the within deposition were written down by the commissioner, and then proposed by him to the witness; and, at the request of the witness, he was permitted to write down his answers in presence of the commissioner, and he then subscribed the same in his presence. The deposition of the said John McLean was taken at the request of the attorney of Mary Reeside, executrix, &c., to be used in the investigation of a claim against the United States now pending in the Court of Claims, in her name. Notice was waived by the adverse party, and he did not attend, nor object.

THOMAS EWING, JR., *Com'r.*

The deposition of Richard H. Stanton, taken on the 10th day of November, 1855, at the office of J. G. Hickman, in Maysville, Kentucky, to be read as evidence on the trial, in the United States Court of Claims, of the claim of Mary Reeside, executrix of James Reeside, against the United States. Given under my hand this 10th November, 1855.

J. G. HICKMAN,
Commissioner.

The witness being of lawful age, and first duly sworn, deposes and says:

1st question.—Please state your name, occupation, your age, your place of residence for the past year; whether you have any interest, direct or indirect, in the claim which is the subject of inquiry in the proceeding named in the above caption, and whether you are related to the claimant. And if so, in what degree?

Answer.—My name is Richard Henry Stanton; my occupation is the practice of law; I am forty-three years of age; I have had my place of residence for the past year in Maysville, Kentucky, though I have been absent a good deal from this place; I have no interest at all in the claim alluded to in the question, and am not related to the claimant in this proceeding.

1st question prepared for the claimant and sent to the commisioner.—State whether you was or was not a member of the United States Congress during the session of 1852, and whether you were or were not a member of the Committee on the Post Office and Post Roads.

Answer.—I was a member of Congress continuously from 1849 to 1855. During the sessions of 1849 and 1850 and 1850–'51 I served as a member of the Committee on the Post Office and Post Roads.

Question 2d.—State whether or not the claim of Mary Reeside, executrix, &c., of James Reeside, deceased, was or was not submitted to your said committee for settlement.

Answer.—The claim of Mary Reeside, executrix, &c., of James Reeside, deceased, was referred by the House of Represeneatives to said committee during the session of 1849–'50 or 1850–'51, or both those sessions. The Journals of the House will show the fact.

Question 3d.—State what action was had upon said claim—whether any bill for the payment of the same was or was not proposed. And if so, by whom and how, and in what way the same was disposed of at the time by your committee? Please state fully your knowledge or recollection in this behalf.

Answer.—At one or the other of these sessions, I do not remember which, the papers in the case were referred to me, as a subcommittee, to examine and report what action was proper in relation thereto. I gave the case a thorough examination, and thought the sum ratified by the jury who tried the cause in the federal court between the United States government and James Reeside ought to be paid to his executrix. The record of that suit was in the papers. I reported my opinion to the committee, and the case was then considered by the committee, who concurred unanimously with me in opinion. I mean the members present, there being more than a quorum present. I was instructed to report a bill to the House, providing for the payment of the claim. After this action, and before the committee adjourned, the Hon. Mr. Phelps, of Missouri, a member of the committee, came in and requested permission to examine the papers before the final report was made. The papers were taken by him, but not returned to the committee room in time for any report at that session. But for this fact I should have reported, as instructed by the committee, in favor of the payment of the claim.

Question 4th.—Please state any other fact you may know material to this your examination.

Answer.—I know of no other matter relative to the claim in question that is material.

And further deponent saith not.

R. H. STANTON.

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STATE OF KENTUCKY, }
County of Mason. }

On this 10th day of November, in the year 1855, personally came Richard H. Stanton, the witness within named, and after having been first sworn to tell the truth, the whole truth, and nothing but the truth, the questions contained in the within deposition were written down by the commissioner, and then proposed by him to the witness, and the answers thereto were written down by the commissioner in the presence of the witness, and then read to the witness by the commissioner, and then the witness subscribed the deposition in the presence of the commissioner.

The deposition of Richard H. Stanton, taken at the request of the attorney of Mary Reeside, to be used in the investigation of a claim against the United States, now pending in the Court of Claims, in the name of Mary Reeside, executrix of James Reeside, deceased. I see,

by the consent of M. Blair, the solicitor, that it was agreed to permit this deposition to be taken at any time. None of the parties were present at the examination, nor was any attorney of any of the parties. Given under my hand.

JOHN G. HICKMAN,
Commissioner.

Fees of witness not claimed. Fees of commissioner, $5, and paid by attorney of claimant.

JOHN G. HICKMAN.

DISTRICT OF COLUMBIA, } *ss.*
County of Washington. }

On this sixteenth day of November, A. D., 1855, personally came Richard S. Coxe, the witness within named, and after having been sworn to tell the truth, the whole truth, and nothing but the truth, the questions contained in the within deposition were written down by the commissioner, and then proposed by him to the witness, and the answers thereto were written down by the commissioner in the presence of the witness, who then subscribed the deposition in the presence of the commissioner.

The deposition of Richard S. Coxe, taken in pursuance of the order of the Court of Claims, dated the 29th day of October, 1855, and directed to Daniel Ratcliffe, esq., one of the commissioners of said court, at the request of Mary Reeside, executrix of James Reeside, to be used in the investigation of the claim against the United States, now pending in the Court of Claims in the name of Mary Reeside, executrix of James Reeside; which order of the court is herewith returned annexed.

In pursuance of the thirteen rule of the court, the witness first deposeth and saith that his name is Richard S. Coxe, that he is, and for many years has been, a lawyer by profession, that he is above sixty years of age, and that his place of residence is, and for about thirty years has been, the city of Washington, D. C.

Witness is in no way related to the petitioner or to her testator. How far and to what extent he is interested in the claim it will be in the power of the court to judge from the facts which he is about to state.

Witness was well acquainted with the late James Reeside in his life time, and was consulted by him as his counsel in reference to his controversies with the Post Office Department. After as full an investigation as it was in the power of witness to bestow upon the subject, he arrived at the conclusion that the government was largely indebted to Reeside. The government, however, claimed a considerable balance as due to it. Various efforts were made to bring the conflicting claims to an amicable settlement, but the differences between them were so great, the accounts so complicated, their views of the facts and principles involved were so discordant, that the hope of such an arrangement was abandoned. The next effort on the part of Reeside was to have an amicable suit instituted by the government for the purpose of

bringing these controversies to a close, and ascertaining on which side the balance lay. This course, it was understood at the time, met with the approbation of General Jackson, then the President of the United States. For some reason, which witness is unable to state from his personal knowledge, this plan was abandoned by the government, and a suit was instituted in the circuit court for the eastern district of Pennsylvania, by the United States, for the recovery of the balance which it claimed to be due, amounting, according to the recollection of witness, to upwards of $32,000. Reeside claimed that there was a balance due him of between $250,000 and $300,000. Reeside appeared to the action and filed two pleas—one the general issue of non-assumpsit, the other a set-off of his claims which had been presented to rejected by the accounting officers of the treasury.

The counsel employed by the United States were Mr. Read, then district attorney, he thinks, and Mr. Cadwalader, both eminent lawyers at the Philadelphia bar; on the part of Mr. Reeside, witness was employed as having been for a long time conversant with the subject, and there were associated with him Mr. Charles J. Ingersoll, his son Mr. Ingersoll, jr., and Mr. William Meredith; Mr. Matthew St. Clair Clarke was also employed as assistant and advisory counsel. It was deemed highly important that *witness* should be present and take an active part in the trial of the cause, and an agreement was made between Reeside and witness, that all my (witness') expenses to Philadelphia should be paid, and a contingent fee proportioned to the amount of the balance, ascertained to be due from the government to Reeside, should be paid me (witness.) Of this latter item, nothing has been paid me (witness,) and as I (witness) know of no other source from which I can expect payment, I (witness) submit to the court whether, and to what extent, I am an interested witness in the pending case.

After these preliminary observations, he (witness) proceeds to answer the specific interrogatories addressed to him, as follows:

Interrogatory 1*st*.—State whether or not you *was* present at the trial of the suit of the United States *vs*. James Reeside, in the circuit court of the United States for the eastern district of Pennsylvania, sitting in Philadelphia, in the year 1841, and what connexion, if any, you had with said case?

Answer.—As counsel for James Reeside, I was present in Philadelphia at the trial of the cause of the United States against James Reeside, from the opening of the case in October, 1841, until I concluded my argument in summing up the evidence. I did not remain in Philadelphia to hear the charge of the court, or the verdict of the jury.

Interrogatory 2*d*.—State fully and distinctly, to the best of your recollection, the mode in which said cause was conducted, and especially as to the latitude allowed by the court to either party in the introduction of proof?

Answer.—In answer to the second interrogatory, witness says that from the opening of the case to the *jury* until the rendition of the verdict, the trial lasted about six weeks. Each item of charge and counter-charge, after a mutual adjustment or agreement, at the early

date of 1832, was the subject of contestation. Many of these items might have constituted the ground of a separate suit, and occupied much time in the trial of it. Beyond any case in which I have ever been professionally concerned, or of which I have any knowledge, this was the most complicated. The counsel for the United States were aided by the presence of several offices of the department, with all the books and papers which the office could furnish, and with all the information and explanation which could be derived from these sources. In all my experience, I can truly say, that I have never known a case conducted with more ability and zeal than was this on the part of the government. I have never known a more intelligent, and so far as it was in my power to form a judgment, a more conscientious jury, or one more indefatigably laborious in probing to the bottom every item of claim, and sifting the testimony. Nor did I ever witness or hear of a case in which more indulgence or a greater latitude was allowed to the counsel for the plaintiffs.

One instance, to illustrate this latter point, I will here state, as I have seen no allusion made to it by any one else.

In conformity with the practice of the courts generally, and certainly of those in Pennsylvania, the plaintiffs opened the case for the United States in an exposition of the facts upon which reliance would be placed, and then proceeded to adduce the evidence to support his views. Having concluded, the counsel for defendant opened his case and exhibited his testimony; at the close of this part of the case, the counsel for the United States again opened in reply, and intimated his intention to introduce evidence which went to the extent of beginning the case *ab ovo*. This was objected to by myself, as varying from the regular course of practice, according to which the plaintiff must in the outset exhibit his entire case, and after the defendant had closed his defence, the plaintiff was restricted to merely rebutting testimony. In the course of a somewhat extended argument upon this point, Mr. Cadwalader, one of the counsel for the United States, while unable to controvert the general rule, intimated that unless this privilege was allowed him, he would enter a *non pros.*, and have the cause dismissed. The court, after consultation, pronounced an opinion that the objection was well taken, and that the United States being in the situation of every other party to a suit in court, had no legal right to introduce, at that stage of the case, other than rebutting testimony. That as to the power of a plaintiff in a case in which an offset was pleaded, the defendant became an actor, and the suit could not be discontinued or *non prosed* at the pleasure of the plaintiff when he saw the case was against him. That from the then aspect of the cause it was probable not only that the verdict of the jury might be in favor of defendant so as to relieve him from the claim exhibited against him, but that he might be found to be entitled to a verdict and judgment for a large balance in his favor. Inasmuch, however, as in this case, the United States being a party against whom the same remedy to enforce payment of a balance found to be due to defendant could not be enforced by any process of execution, but that recourse must be had to another department of the government to provide the means of paying its just debts, and that the enforcement of the law,

however just it might be, might interpose an obstacle when the claim of defendant was presented, the court had arrived at the conclusion to disregard all the technical rules of law and to open to the council of the United States the utmost liberty of introducing what, in the shape of testimony, they might deem proper or advisable.

In this view of the matter I concurred. The case accordingly went on, and no further objection was raised on our side to the competency of evidence. Every latitude was allowed the United States, as the court explicitly stated, beyond what would have been allowed in a case between two private individuals.

It is perhaps proper in this connexion to state, that having left the court before the close of the case, it is possible, and even probable, that I may have erred in a statement which I have heretofore made from information obtained from others, that eleven of the jurors were prepared to render their verdict for $50,000 more than the sum to which they certified. I have since seen reason to believe that the jury actually proposed a verdict for $25,000 more than they certified to. Whether I was misinformed or not, I am unable to say, or whether the sum of $25,000 which was deducted by the jury from the amount first agreed upon, or was the real point of original difference with the jury.

Interrogatory 3d.—State any other matter or fact of benefit to either party, material to the subject of your examination.

Answer.—I scarcely know what response to make to the concluding general interrogatory. I was the counsel who moved to dismiss the writ of error in the Supreme Court for want of prosecution. I appeared as counsel before Congress, and particularly before a select committee of the House of Representatives appointed to investigate the case. One argument I presented in writing to this committee, dated in April, 1844, and have reasons to believe that the committee had agreed to report favorably in the case, but that one of its leading members was unexpectedly called home from Washington in consequence of some private business or domestic calamity, and did not return in time to have the report made. I may further add that I have reason to believe, and such was the advice given to Reeside, on the occasion of an application to the circuit court for a new trial, that if the United States would defray the expense of such new trial and abide by its result, he would unite in asking the court to set aside the verdict and allow the case to be tried anew, but that he was so impoverished by the controversy that he was unable to encounter the expense himself. I have nothing further to add material to the case, unless I am particularly interrogated upon points which do not occur to me.

RICHARD S. COXE.

The adverse party by its counsel waived notice, and did not attend the taking of this deposition.

A. AUSTIN SMITH,
Commissioner.

Fees of witness $1 25. Commissioner's fees $9 25.

Depositions of witnesses produced, sworn, and examined on the fourteenth day of December, in the year of our Lord one thousand eight hundred and fifty-five, before Samuel C. Perkins, of the city of Philadelphia, State of Pennsylvania, one of the commissioners appointed by the Court of Claims to take testimony to be used in the investigation of claims against the United States before said court, to be used in the investigation of a claim against the United States, now pending in the said court, in the name of Mary Reeside, executrix of James Reeside:

Michael F. Groves, a witness produced, sworn, and examined on the part of the above claimant, deposeth as follows:

My name is Michael F. Groves, my occupation is doctor of medicine, my age is forty-six years. I have resided for the past year, and now reside, at the northeast corner of Front and Catharine streets, in the third ward of the city of Philadelphia. I have no interest, direct or indirect, in the claim which is the subject of inquiry. I am not related to the claimant, either by blood or marriage, in any way whatsoever; and,

1st. To the *first* interrogatory, on the part of the claimant, he answers as follows:

I was one of the jurors who tried the case of the United States *vs.* James Reeside, in the United States circuit court for the eastern district of Pennsylvania, in the city of Philadelphia, in the year 1841.

2d. To the *second* interrogatory, on the part of the claimant, he answers as follows:

First. Upon the second morning of said trial of said case I was elected secretary by the jury, and took notes of the testimony presented both on the part of the plaintiff and defendant. The facts and proofs adduced on the part of the government were exceedingly numerous; several furniture car-loads of dockets were brought into court, all of which were presented to the jury, and charges therein read to them. By dockets I mean the books of the Post Office Department, kept by the clerks thereof. The claim was presented, on the part of the government, item by item, according to a printed statement, a copy of which was furnished to each of the jurors. In addition to this written or documentary evidence the government introduced an immense amount of oral testimony to sustain what was written or supply what was omitted. Most of the witnesses produced by government were persons in its employ in some capacity. The mode adopted by us to comprehend the connexion of this testimony, oral and written, was to note in its proper connexion upon the printed statement furnished us, as before stated, upon a blank leaf opposite the items, the evidence referring to each one respectively. The evidence thus given accumulated into so large a mass that the labor and attention necessary to understand it became very great, but we endeavored to pursue it, each witness through their various examinations, at the same time to give the proper construction and weight to be attached to the testimony as given. There were also a large number of drafts, letters, and other memoranda, certified copies of papers, &c., produced in evidence, of all of which the jurors were obliged to take notes.

Second. I cannot be more specific than to state that the government commenced with its books and papers, and brought before us a clerk of the Post Office Department to explain and verify each one. This course of proceeding was very tedious, and caused the same witness to be brought upon the stand several times each day, and some continually. I remember Mr. Soulter, Mr. Washington, and Mr. Hobbie were continually so introduced, so that it became often difficult, and required no little labor and care in assigning their various statements to the proper subject matter to which they respectively had reference. The government occupied a long time in opening the case, and presenting the proofs to sustain its demands. After it closed, Mr. Reeside's counsel stated the grounds of defence, the amount of the offset pleaded, or the balance claimed by them in favor of their client. Then commenced another protracted and complicated review and examination of books, documents, drafts, letters, and other papers and writings. The course pursued by Reeside's counsel was to show that many of the debits charged against him should of right have been credited in his favor. This brought up many of the items before put in evidence by the government for examination and consideration a second time in reference to the defence, and the same course was pursued by the jury as had been when these items were first presented for their consideration; noting the effect the proof so produced had, either in sustaining or negativing the charge or item so presented. In this manner, while the impressions were fresh on our minds, we disposed of the items which were presented in our own minds. The claims of Reeside were principally drafts negotiated for the department, and charged to him, for which he claimed credit. Also for extra service for mail transportation; and also fines formerly remitted to him, but subsequently charged by the Auditor or new Postmaster General, I cannot now say which. The evidence given in all these cases for Reeside was positive, and convincing to our minds. After Reeside had closed his defence, the government claimed to reopen its cause with an entirely new statement of claim, entirely distinct and separate from any matter of rebuttal—to supply omissions in their case as originally opened and examined to, and not to confine itself to rebuting testimony merely. This movement on behalf of the government gave rise to a fierce and lengthy discussion on the part of the counsel of the respective parties, but the judges decided that although it was a departure from the rule, they in this instance give the greatest latitude to both parties, and would patiently hear all that either could adduce to sustain their respective demands. The government thereupon commenced anew, and introduced witnesses to prove claims which they had omitted in the outset, and also to prove new and independent claims, and to rebut the testimony offered on the part of the defendant. This second effort on the part of the government was more protracted than the first. A new printed statement was presented to the jury, containing this additional matter; and also a third printed statement, showing the differences between their accounts and those of the defendant. We had again to go through the inspection of books and papers, and the examination of the witnesses before pro-

duced, and also of others. The labor upon this part of the case was greater than upon the former part. Reesides' rebuttal did not occupy much time; the facts presented were all noted by the jury as before. The government concluded, and the case was then argued by counsel, and the judge charged the jury. The jury took notes both of the arguments and charge. The whole time occupied in this cause from the time it commenced on the 22d of October, 1841, till the jury went out on the 29th of November, in the same year, was more than five weeks.

Third. The jury were out just one week, during all which time, they were diligently employed in considering and examining the facts and proofs, documentary and oral, before they rendered their verdict.

Fourth. The jury were quite unanimous upon almost all the items which go to make up the balance in Reeside's favor. And only upon a few items did one juror object, but after a candid consultation and comparing of notes, the verdict was arrived at. We agreed upon a verdict for about one hundred and eighty-eight thousand, seven hundred dollars ($188,700) in Reeside's favor, with interest. I am not able to present any other matters or facts which can in any way illustrate the labor performed, and the course pursued and adopted in arriving at the verdict rendered, except as is stated in my answer to the next succeeding interrogatory.

To the third interrogatory on the part of the claimant he answers as follows:

There was another conclusion arrived at than the amount submitted as our final verdict. On Saturday night, December 3, 1841, the verdict was agreed upon and sealed, and the judge notified thereof. The jury then separated. On the following Monday, when we met to render the verdict, one of the jurors insisted that we should review and reconsider a few of the items, concerning which he said his mind was not satisfied. Therefore, in order to secure perfect unanimity, the verdict as completed was reviewed and reconsidered, the items which were the subject of difference were carefully examined, and we finally agreed to deduct the even sum of twenty-five thousand dollars, ($25,000) from the amount of our verdict as previously agreed upon. Eleven jurors were in favor of holding to our first conclusion, and but one insisted on the alteration. The eleven jurors were induced to consent to this deduction, not that they doubted the correctness of the first conclusion, for they believed that a still larger sum than the amount at first concluded upon was in reality due to Reeside, but as evidence had not been produced by him, certain large items of his claim had not been satisfactorily proved to the jury. But the whole issue on all the facts and proof having been submitted to our investigation by both parties, we did not wish to fail in making up a verdict such as would afford subsequent satisfaction. The original amount of the verdict, with interest, was nearly two hundred and seventeen thousand dollars, ($217,000.) Our last verdict, that is, the one actually rendered, was one hundred and eighty-eight thousand, four hundred and ninety-six dollars and six cents, ($188,496 06,) thereby reducing the amount about thirty thousand dollars, ($30,000,) which the eleven jurors believed he was justly entitled to.

To the fourth interrogatory on the part of the claimant, he answers as follows:

I am not aware of any other matters or facts not specifically interrogated as to, that may be of benefit to either party, and material to the subject matter of my examination.

M. F. GROVES, *M. D.*

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STATE OF PENNSYLVANIA, } *ss.*
City of Philadelphia. }

On this fourteenth day of December, A. D. 1855, personally came Michael F. Groves, the witness above named, and after having been first sworn to tell the truth, the whole truth and nothing but the truth, the interrogatories hereunto annexed were severally proposed by the commissioner to the witness, and the answers thereto were written down by the commissioner in the presence of the witness, who then subscribed the deposition in the presence of the commissioner. The deposition of Michael F. Groves was taken at the request of Mary Reeside, executrix of James Reeside, to be used in the investigation of a claim against the United States, now pending in the Court of Claims in the name of said Mary Reeside, executrix, as aforesaid. The notice required by the eleventh rule of said court was waived by the solicitor for the United States, as appears by a certified copy hereunto annexed of his entry on the original interrogatories filed in the office of said court.

SAMUEL C. PERKINS,
Commissioner Court of Claims.

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Michael F. Groves, the witness above named, desires to correct his deposition as above stated as follows:

I, Michael F. Groves, was mistaken in some facts set forth above, my memory not proving exactly accurate after so long a time had elapsed. I now remember that shortly after the trial of the case had commenced, one of the jurors, Mr. Biddle, was taken sick with the varioloid, and the case went on by consent of all parties with only eleven jurors. So that where I have in my above deposition stated that eleven jurors were in favor of holding to the first conclusion, I should have said ten; but there was but one dissenting, nevertheless. I also further desire to state that the jury were polled upon the rendition of the verdict.

M. F. GROVES, *M. D.*

Before me, December 14th, 1855.

SAMUEL C. PERKINS,
Commissioner Court of Claims.

Commissioner's fees, $4 60.

John C. Martin, a witness produced, sworn, and examined, on the part of the above claimant, deposeth as follows:

My name is John C. Martin, my occupation is commission merchant, my age is forty-seven years; I now reside at No. 130 South Eighth street, in the eighth ward of the city of Philadelphia; I have resided in the immediate neighborhood of my present dwelling for upwards of twenty years; I have no interest, direct or indirect, in the claim which is the subject of inquiry, and I am not related to the claimant, either by blood or marriage, in any way or shape whatsoever. And—

To the *first* interrogatory on the part of the claimant, he answers as follows:

I was one of the jurors who tried the case of the United States *vs.* James Reeside, in the United States circuit court for the eastern district of Pennsylvania, in the city of Philadelphia, in the year 1841.

To the *second* interrogatory on the part of the claimant, he answers as follows:

First. A printed book or statement was furnished to each of the jury containing the account of debits and credits against and in favor of Mr. Reeside, as stated and claimed by the government. As testimony was offered upon each item, we noted opposite to it the purport of the evidence. A large number of papers and books were offered in evidence, and of all these the jury took notes. A large number of clerks were also examined. I should think nearly one hundred witnesses were examined altogether on both sides. We took notes of the arguments of counsel during the progress of the cause. I remember on one occasion, when there was a difference of opinion between the court and some of the counsel, as to some matter which had been given in evidence on the preceding day, they referred to and were governed by the notes taken by Dr. Michael F. Groves, one of the jurors who had been elected our secretary, and who took accurate and complete notes of everything that transpired. When Reeside opened his defence and proceeded with his case, the same care was used by the jury. Reeside produced all the books he had, check-books, bill-books, &c., and a great number of drafts and letters, &c., of all which the jury took careful notes. Oral testimony also was offered on the part of the defence; Mr. Page, who was then postmaster in this city, and others. I think also Mr. Reeside presented a printed statement of the account on his part, a copy of which was furnished to each of the jurors. After Mr. Reeside had closed the defence, the government opened an almost entirely new case, not confining itself to rebuttal. This course was allowed by the court, who gave unusual latitude to both parties; and the testimony then produced on the part of the government was even more voluminous and lengthy than at the outset; a great deal was in repetition and explanation. Mr. Reeside's rebutting evidence was not lengthy, but to the point. The case was then argued by counsel, and the court charged the jury. To all these the jury gave the most careful and patient attention, taking notes of the same.

Second. I do not know that I can state anything more fully as to the manner in which the proofs were presented by the respective par-

ties. The course we found it absolutely necessary to adopt, in order to understand the same intelligibly, was by the utmost attention, a careful taking of memoranda and notes during the progress of the case, each juror noting matters for his own guidance, and by appointing Mr. Groves secretary, for the purpose of having him take full and accurate notes of the whole proceeding. The first thing that was done, after the case had been given into our charge by the judge, was to read over the whole of Dr. Groves' notes. Each item in the accounts, both of Mr. Reeside and the government, was considered separately and examined in connexion with the books which had been given in evidence. One of our number, who is since deceased, was a regular book-keeper in one of our city banks, and he opened a regular ledger account and entered therein every item as agreed upon.

Third. We were fully one week consulting upon the facts and proofs, documentary and oral, before we rendered our verdict; and during all that time we were laboriously engaged upon the case. I am sure no jury could have given a case more attention or understood it better.

Fourth. The jury was entirely unanimous upon almost all the items which entered into the amount of our verdict, and guided us in arriving at the conclusion we did. Upon the second day of the trial, one of the jurors, Mr. Biddle, was taken sick with the varioloid, and the case went on, by consent of all parties, with but eleven jurors. Upon some of the items one of the jurors was somewhat doubtful, but we finally agreed upon a verdict on Saturday evening, December 3, 1841, sealed it up, gave notice to the judge, and separated. I do not now remember any other matters or facts which can in any way illustrate the labor performed and the course pursued and adopted in arriving at the verdict rendered except as stated in my answer to the next succeeding interrogatory.

To the *third* interrogatory on the part of the plaintiff or claimant, he answers as follows:

There was another conclusion arrived at than the amount submitted as our final verdict. The conclusion we had arrived at on Saturday, December 3, 1841, and sealed up as our verdict, as stated in my answer to the next preceding interrogatory, was some twenty-five thousand dollars ($25,000) more than our final verdict which was actually rendered, and which was for one hundred and eighty-eight thousand four hundred and ninety-six dollars and six cents, ($188,496 06.) When we came together on Monday morning for the purpose of going into court and rendering our verdict, so strong an opposition was made by one of the jurors to some of the items which we had allowed in Reeside's favor, upon which he said his mind was not satisfied, that we finally, in order to agree upon a verdict, had to consent to strike off some twenty-five thousand ($25,000) or thirty thousand dollars ($30,000) from the amount upon which we had previously fixed, and which left the amount of our verdict, as finally rendered, the amount above stated. Ten of the jurors were fully convinced of the justness of the whole amount as originally named, but in order to prevent a discharge for want of agreement finally consented to the reduction above stated.

To the *fourth* interrogatory on the part of the claimant he answers and says:

I am not aware of any other matters or facts, not specifically interrogated, as to that may be of benefit to either party and material to the subject matter of my examination.

JOHN C. MARTIN.

STATE OF PENNSYLVANIA, } ss.
City of Philadelphia, }

On this fourteenth day of December, A. D. 1855, personally came John C. Martin, the witness above named, and after having being first sworn to tell the truth, the whole truth, and nothing but the truth, the interrogatories hereunto annexed were severally proposed by the commissioner to the witness, and the answers thereto were written down by the commissioner, in the presence of the witness, who then subscribed the deposition in the presence of the commissioner. The deposition of John C. Martin was taken at the request of Mary Reeside, executrix of James Reeside, to be used in the investigation of a claim against the United States, now pending in the court of claims, in the name of the said Mary Reeside, executrix as aforesaid. The notice required by the eleventh rule of said court was waived by the solicitor for the United States, as appears by a certified copy, hereunto annexed, of his entry on the original interrogatories filed in the office of said court.

SAMUEL C. PERKINS,
Commissioner Court of Claims.

Commissioners fees $3 10.

SUPREME COURT OF THE UNITED STATES.

THE UNITED STATES, ON THE RELATION OF MARY REESIDE, ADM'X OF JAMES REESIDE, PLAINTIFF IN ERROR,

Against

ROBERT J. WALKER, SECRETARY OF THE TREASURY OF THE UNITED STATES.

In error to the circuit court of the United States for the District of Columbia, holden in and for the county of Washington.

THE UNITED STATES OF AMERICA, *sct.*

The President of the United States to the judges of the circuit court of the District of Columbia, sitting for the county of Washington:

Because in the record and proceedings, as also in the rendition of the judgment of a plea, which is in the said court before you, wherein Mary Reeside, administratrix of James Reeside, is plaintiff, and the

Hon. Robert J. Walker, Secretary of the Treasury of the United States, is defendant, a manifest error hath happened, to the great damage of the said plaintiff, as by her complaint appears, and we being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, now sitting, together with this writ; so that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, which of right and according to the laws and customs of the United States should be done.

Witness the honorable Roger B. Taney, chief justice of said Supreme Court.

Issued this 10th day of February, 1849.

JNO. A. SMITH,
Clerk circuit court, Washington county, D. C.

DISTRICT OF COLUMBIA, *to wit:*

The United States of America to the honorable Robert J. Walker, Secretary of the Treasury of the United States, greeting:

You are hereby cited and admonished to be and appear immediately at a Supreme Court of the United States, now sitting, pursuant to a writ of error filed in the clerk's office of the circuit court of the District of Columbia, for the county of Washington, wherein Mary Reeside, administratrix of James Reeside, is plaintiff in error, and you are defendant in error, to show cause, if any there be, why judgment rendered against the said plaintiff in error should not be corrected, and why speedy justice should not be done to the parties in this behalf.

Witness the honorable W. Cranch, chief judge of said circuit court, this 10th day of February, 1849.

W. CRANCH.

Service acknowledged.

PHIL. BARTON KEY,
U. States Attorney, D. C.

Know all men by these presents that we, Mary Reeside, John E. Reeside, and Matthew St. Clair Clarke, are held and firmly bound unto Robert J. Walker, Secretary of the Treasury of the United States, in the full and just sum of two hundred dollars, current money, to be paid to the said Robert J. Walker, his certain attorney, executors, administrators or assigns; to which payment well and truly to be made and done, we bind ourselves and each of us, our and each of our heirs, executors, and administrators, jointly, severally, firmly by

these presents. Sealed with our seals, and dated this twentieth day of January, eighteen hundred and forty-nine.

Whereas lately, at a circuit court of the District of Columbia, sitting for Washington county, in a suit depending in the said court, wherein Mary Reeside, administratrix of James Reeside, was plaintiff, and the Hon. Robert J. Walker, Secretary of the Treasury of the United States, was defendant, judgment was rendered against the said plaintiff, and she having obtained a writ of error, and filed a copy thereof in the clerk's office of the said circuit court, to reverse the judgment in the aforesaid suit, and a citation directed to the said Robert J. Walker, citing and admonishing him to be and appear immediately at a Supreme Court of the United States, now sitting.

Now, the condition of the above obligation is such, that if the said Mary Reeside, administratrix of James Reeside, shall prosecute her writ with effect, and answer all damages and costs, if she fails to make her plea good, then the above obligation to be null and void, otherwise to be and remain in full force and virtue in law.

MARY REESIDE, [SEAL.]
J. E. REESIDE, [SEAL.]
MW. ST. CLAIR CLARK, [SEAL.]

Signed, sealed, and delivered in the presence of—
JNO. YARDS, jr.

Approved. W. CRANCH.

True copy. Test: JNO. A. SMITH, *Clerk.*

—

Style of Court.

DISTRICT OF COLUMBIA, *to wit.*

At a circuit court of the District of Columbia, begun and held in and for the county of Washington, at the city of Washington, on the third Monday of October, being the sixteenth day of the same month, in the year of our Lord one thousand eight hundred and forty-eight, and of the independence of the United States the seventy-third.

Present, the honorable William Cranch, chief judge; James S. Morsell and James Dunlap, assistant judges; Robert Wallace, esquire, mashall; William Brent, clerk.

In the records of proceedings of said court, amongst others were the following, to wit:

Parties.

The UNITED STATES on the relation of Mary Reeside, administratrix of James Reeside,
vs.
ROBERT J. WALKER, Secretary of the Treasury of the United States.

Be it remembered, that the said relator, by Richard S. Coxe, esquire, her attorney, filed in court here, on the fourth day of November, in the year of our Lord one thousand eight hundred and forty-eight, the following petition, to wit:

Petition.

To the honorable the circuit court of the District of Columbia, in and for the county of Washington.

The humble petition of Mary Reeside, of the city and county of Philadelphia, Commonwealth of Pennsylvania, sheweth:

That James Reeside, late of the city, county, and commonwealth aforesaid, gentleman, on the thirty-first day of August, eighteen hundred and forty-two, then being in full life, but since deceased, made his last will and testament, wherein he appointed the said Mary Reeside sole executrix. That the said James Reeside, thereafter, on the third day of September, eighteen hundred and forty-two, at Philadelphia aforesaid, the place of his domicil, deceased. That the said Mary Reeside, on the seventh day of September, eighteen hundred and forty-two, presented said will to William Peirsoll, esq., at that time register for the probate of wills, and granting letters of administration in and for the city and county of Philadelphia, commonwealth of Pennsylvania, and that the said will was then and there duly proved, approved, and allowed as and for the last will and testament of the said James Reeside, which proof, approbation, and allowance has not been vacated or reversed, but is in full force and effect. That the said Mary Reeside signified her acceptance of the executorship, and letters of administration of the estate of said James Reeside, with the will annexed, were thereafter, on the ninth day of September, eighteen hundred and forty-two, granted to the said Mary Reeside.

That the said Mary Reeside, by force of the said will, the probate thereof, and her acceptance as aforesaid, became seised, and now is seised, of all and singular the personal estate, and choses in action, and credits to which the said James Reeside, at time of his decease, was entitled, and has right, as such executrix, to reduce the same into possession.

Your petitioner further sheweth, that the said James Reeside, in his lifetime, made sundry contracts with the Post Office Department of the United States, for the transportation of the mail, which the said James Reeside in all things well and truly performed, so far as the same were on his part to be performed; that the said United States made sundry payments to the said James Reeside, in part performance of their obligations arising under said contracts.

That the said James Reeside in his lifetime claimed to be credited in the proper books of account of the United States with sundry sums of money due to him under and by reason of the said contracts, which credits the Postmaster General refused to make.

Your petitioner further sheweth, that the United States of America instituted a suit in their name against the said James Reeside, returnable at the circuit court of the United States in and for the eastern district of Pennsylvania, in the third circuit, at its November term, eighteen hundred and thirty-nine, when and where the same was entered; that the said suit was instituted to recover a supposed balance in favor of the United States, amounting to the sum of thirty-two

thousand seven hundred and nine dollars and sixty-two cents, originating in and from the aforesaid contracts.

That the said James Reeside, by his counsel, appeared in said court and took upon himself the defence thereof; that the sad suit was continued in said court until the twenty-second day of October, eighteen hundred and forty-one, when the said James Reeside pleaded thereto, by leave of court, non assumpsit, and a set-off, and issue was regularly joined between the parties; that the said suit was further continued until December, eighteen hundred and forty-one, when the same was submitted to a jury regularly empanelled, and on the sixth day of December the jury returned their verdict into court, wherein they found the issues in favor of the said James Reeside, and certified that the said United States were indebted to the said James Reeside in the sum of one hundred and eighty-eight thousand four hundred and ninety-six dollars and six cents.

Your petitioner further sheweth, that thereafter the rendition of said verdict, the United States aforesaid obtained a rule upon the said James Reeside to show cause why a new trial in said suit should not be granted, and on the ninth day of December, eighteen hundred and forty-one, filed reasons for such new trial.

Your petitioner further sheweth, that said application for new trial thereafter came on before the said court for hearing, and upon full consideration thereof by the court, on the twelfth day of May, eighteen hundred and forty-two, was disallowed and overruled.

That on the same twelfth day of May, upon consideration of the said court, judgment was rendered upon the verdict aforesaid in favor of the said James Reeside, which judgment remains in full force, and is in no part satisfied, annulled, or reversed.

Your petioner further sheweth, that under and by virtue of the verdict aforesaid, and the judgment thereupon rendered by the said circuit court, within and for the eastern district of Pennsylvania, in the third circuit as aforesaid, the said James Reeside became entitled to have the sum of one hundred and eighty-eight thousand four hundred and ninety-six dollars and six cents carried to the credit of the said James Reeside upon the books of the Treasury Department of the United States, under date of the twelfth day of May, eighteen hundred and forty-two, as the balance then due to the said James Reeside from the United States.

Your petitioner further shews that by virtue of the judicial proceedings hereinbefore exhibited, and the judgment hereinbefore named, the United States aforesaid, on the twelfth day of May aforesaid, became indebted, by matter of record, to the said James Reeside in the sum of one hundred and eighty-eight thousand four hundred and ninety-six dollars and six cents, which sum and the accruing interest thereon is now unpaid.

Your petitioner further sheweth, that on the twenty-ninth day of March, eighteen hundred and forty-eight, she applied to Robert J. Walker, the Secretary of the Treasury of the United States aforesaid, and exhibibted to him the letters of administration hereinbefore mentioned, and also an exemplified copy of the record and proceedings in the circuit court hereinbefore mentioned, and thereupon requested the said Secretary to enter, or cause to be entered, upon the books of the Trea-

sury Department, under date of May twelfth, eighteen hundred and forty-two, a credit to the aforesaid James Reeside in the sum of one hundred and eighty-eight thousand four hundred and ninety-six dollars and six cents; also requested the said Secretary to pay to your said petitioner the said sum, with interest from the twelfth day of May aforesaid, which the said Secretary refused, and yet refuses and neglects to do, so that the only means of obtaining the money which is justly due to your petitioner as executrix as aforesaid is by application to your honorable court.

Your petitioner further represents, that the said secretary says, in answer to the aforesaid demand of the said Mary Reeside, executrix as aforesaid, that her request could not be complied with; whereas your petitioner avers that the claim aforesaid has been judicially ascertained and cannot be inquired into, and that the said Secretary, by by virtue of the general laws of the United States, is authorized and required to pay the said snm herein last above mentioned.

Wherefore your petitioner does respectfully pray that your honors, the premises considered, will award the United States writ of mandamus to be directed to the said Robert J. Walker, Secretary of the Treasury Department of the United States, commanding him:

First. That he shall enter or cause to be entered upon the books of the Treasury Department of the United States, under date of May twelfth, eighteen hundred and forty-two, a credit to the said James Reeside of the sum of one hundred and eighty-eight thousand four hundred and ninety-six dollars and six cents.

Second. That he shall pay your petitioner, as executrix as aforesaid, the said sum, with interest thereon from the said twelfth day of May, eighteen hundred and forty-two.

And your petitioner shall ever pray, &c.

MARY REESIDE.

Mary Reeside, the complainant, being duly affirmed saith: that the facts set forth in the foregoing petition, so far as they are stated to depend on her own knowledge, are just and true, and so far as they are stated to depend on the knowledge and information of others, she believes them to be just and true.

MARY REESIDE.

Affirmed and subscribed this seventh day of April, A. D. 1848, before me.

J. R. KANE,
U. S. Judge, D. C. E. D. Pa.

Transcript record referred to in the foregoing petition, page .

In the circuit court of the United States, in and for the eastern district of Pennsylvania, in the third circuit, October session, 1839.

The UNITED STATES OF AMERICA *vs.* JAMES REESIDE. } No. 13.

Summons case—Real debt $32,709 62, as per statement of account from Auditor P. Office Dep't, as late mail contractor. Exit 5th Sept. 1837.

1837. Oct. 11.—Ret'd, "served."
1840. Jan. 25.—Interrogs. filed and rule for comm'n e. p. deft. to Bedford, Penna., sec. reg.
Feb. 4.—Rule on plaintiffs to declare, sec. reg.; 18 interrogs. filed and rule for comm'n e. p. defts to Hollidaysburgh, Penna., sec. reg.
Mar. 2.—Nar. filed; 6th, defendant pleads payment; replication non solvit, and issues and rule for trial by special jury and ca.
1841. Mar. 2.—Agreement for taking of the dep'n Richard M. Johnson, a witness *a witness* for deft. at the city of Washington, on 48 hours' notice to the Auditor Post Office Dep't. filed.
Aug. 4.—Agreement taking dep'n of R. M. Johnson, at Frankfort, Ky., and interrogs. filed; dep'n of R. M. Johnson filed.
Oct. 22.—Deft. pleads non assumpsit and set-off and issues and ca.; and now [a] jury being called, come, to wit, Edward C. Biddle, S. M. Loyd, Thomas Connell, George McLeod, Michael F. Groves, John C. Martin, William C. Hancock, Joseph Harrison, jr., Joseph Parker, William Parker, Wm. Gibson, and Thomas Cook, who are respectively sworn or affirmed, &c.; deposition of Pishey Thompson filed.
Dec. 6.—And now the jurors aforesaid, on their oaths and affirmations aforesaid, respectively do say, that they find for the defendant, and certify that the plaintiffs are indebted to the defendant in the sum of one hundred and eighty-eight thousand four hundred and ninety-six dollars and six cents; judg't nisi. On motion of Messrs. Read & Cadwallader, for plaintiffs, for a rule to show cause why a new trial should not be granted, and for leave to move for such new trial, on exceptions to the ruling of the court on questions of evidence and matters of law, embraced in the charge of the court, without such motion being deemed a waiver thereof, the motion is received; notice thereof to be given to the opposite counsel; ret'ble 1st Monday in January next.
Dec. 9.—Reasons for a new trial filed.
1842. May 12.—Motion for new trial overruled; new trial refused and judgment on the verdict; copy of assignment, James Reeside to John Grey; and copy of notice, James Reeside to Postmaster General, filed.
July 27.—Recipe for writ of error filed.

UNITED STATES,
Eastern District of Pennsylvania, } *sct.*

I certify the foregoing to be a true and faithful transcript of the docket entries in the above named suit.

In testimony whereof I have hereunto subscribed my name and affixed the seal of said court at Philadelphia, this fourth day of
[SEAL.] January, A. D. 1847, and in the seventy-first year of the independence of the said United States.

GEORGE PLITT.

In the circuit court of the United State[s,] for the eastern district of Pennsylvania.

The UNITED STATES OF AMERICA
vs.
JAMES REESIDE.

Summons case—Real debt $32,709 62, (as per statement of account from Auditor Post Office Department, as late mail contractor.)

Issue the above process.

JOHN. M. READ,
U. S. attorney.

SEPTEMBER 5, 1839.

F. HOPKINSON, esq., *clerk.*

Endorsed.—No. 13, circuit court, October S., 1839; U. S. A. *vs.* Reeside; 1839, September 5, precipe filed, and summons, exit.

UNITED STATES,
Eastern district of Pennsylvania. } *sct.*

[L. S.] The President of the United States, to the marshal of the eastern district of Pennsylvania, greeting:

We command you that you summon James Reeside, late of your district, if he may be found therein, so that he be and appear before judges of the circuit court of the United States, in and for the eastern district of Pennsylvania, in the third circuit, at a session of the same court, to be holden at Philadelphia, on the eleventh day of October next, to answer the United States of America of a plea of trespass on the case and ca.; and have you then and there this writ.

Witness the honorable Roger B. Taney, chief justice of the Supreme Court of the United States, at Philadelphia, this fifth day of September, A. D. 1839, and in the sixty-fourth year of the independence of the said United States.

FRAS. HOPKINSON,
Clerk circuit court.

Endorsed.—No. 13, circuit court, October S., 1839; the United States of America; James Reeside; summons; case, real debt thirty-two thousand seven hundred and nine dollars and sixty-two cents; Mr. Reed for U. S. A.

Service accepted for C. Ingersoll for the defendant, 7th September, 1839.

Please to enter my appearance.

C. INGERSOLL.

In the circuit court of the United States, October session, 1839.

THE UNITED STATES
vs.
JAMES REESIDE.

Mr. HOPKINSON: Please enter a rule on the plaintiffs in this case, according to regulation, to declare.

C. J. INGERSOLL.

February 4, 1840.—Endorsed.—No. 13, circuit court, October S., 1839; U. S. A. *vs.* Reeside; rule on plaintiffs to declare; filed February 4, 1840.

In the circuit court of the United States, for the eastern district of Pennsylvania, October sessions, 1839.

UNITED STATES OF AMERICA
vs.
JAMES REESIDE. No. 13.

Interrogatories to John Piper, a witness to be produced, sworn, or affirmed, and examined, on the part of the defendant in the above cause, before commissioners to be named in a commission to be issued out of the said court to the town of Hollidaysburg, in the county of Huntington, in the State of Pennsylvania.

Interrogatory 1st. Do you know the defendant in the above action; and if aye, how long have you known him?

Interrogatory 2d. Do you know anything in relation to this defendant as contractor, under the Post Office Department, for the transportation of the mail from Blair's Gap to Bedford, between the 14th October, 1834, and the 31st December, 1835? if yea, please to state whether, during that time, you were employed in any capacity under the defendant as contractor as aforesaid, what that capacity was, and how long it existed.

Interrogatory 3d. Please to state from your knowledge as aforesaid, particularly and during every portion of that time, by what means of conveyance the mail was transported between Blair's Gap and Bedford between the 14th of October, 1834, and the 31st December, 1835.

Interrogatory 4th. If you know anything further material to the issue between these parties, please to state the same fully, as if more particularly interrogated thereto.

To James Henry, esquire, commissioner named by the defendant: Please to enter a rule for a commission, with the following interrogatories, to issue according to regulation.

C. J. INGERSOLL,
For defendant.

FEBRUARY 18, 1840.

To FRANCIS HOPKINSON, esq.

Endorsed.

UNITED STATES
vs.
REESIDE.

Interrogatories to John Piper, at Hollidaysburg, filed 18th February, 1840.

October session, in the circuit court of the United States for the eastern district of Pennsylvania.

UNITED STATES OF AMERICA
vs.
JAMES REESIDE. No. 13.

It is agreed the deposition of Richard M. Johnson, a witness on behalf of the defendant, be taken at Washington, D. C., before the mayor of Washington, at any time on forty-eight hours' notice to the Auditor of the Post Office Department; that said deposition so taken shall be used in evidence on the trial of this cause, as if the same had been regularly taken.

JOHN M. READ,
United States Attorney.
WM. M. MEREDITH,
For Defendant.

MARCH 1, 1841.

Endorsed: No 13, circuit court, October 8, 1839.—U. S. A. *vs.* Reeside—agreement for taking the deposition of R. M. Johnson, at the city of Washington—filed 2d November, 1841.

U. S. A.
vs. C. C.
REESIDE.

James Reeside, the defendant, being duly sworn, deposes as follows: Whitfield, a material witness for me, being in the city of New York, where he has been subpœnaed to attend this trial here, (prout subpœna and return,) defendant has sent to him to bring him to Philadelphia, if practicable, but is informed by his messenger, now absent, that Whitfield is in such ill health as to make it quite impossible he should come hither.

JAMES REESIDE.

Sworn and subscribed in open court, this 6th November, 1841.
FRAS. HOPKINSON,
Clerk Circuit Court.

On motion of Charles Ingersoll for the defendant, rule on plaintiff to take the deposition of Thomas Whitfield, a witness for the defendant, before any alderman or justice of the peace in the city of New York, upon interrogatories filed, and upon forty-eight hours' notice to he plaintiffs or counsel.

SATURDAY, *November* 6, 1841.

Endorsed: No. 13, circuit court, October S., 1838—U. S. A. *vs* Reeside—affidavit of defendant and rule to take deposition of Mr. Whitfield and ca., filed 6th November, 1841.

U. S. A. *vs.* REESIDE. } Sess. 184 . No. .

Interrogatories to be put to Thomas Whitfield, on the part of the defendant, under the rule hereto annexed.

Interrogatory 1. Do you know James Reeside, the defendant?

2. Do you know, and by what means of knowledge, whether the mail between the city of New York and Hartford, in Connecticut, was guarded, and how, between the first of June, 1833, and the 31st March, 1835? This question refers to the mail travelling by coach.

3. Do you know, and by what means of knowledge, whether James Reeside and Messrs. Babcock & Co., have either of them paid off the other, for the mail guards used on the said route between New York and Hartford? If so, state all you know in relation thereto.

3. Do you know whether, between the first of June, 1833, and 31st December, 1834, any extra teams were used upon the route aforesaid, between New York and Hartford; and if so, please to say how many there were of them.

4. Do you know anything further material to the defendant in this issue? If so, please to set forth the same fully, and at large, as if more particularly interrogated in relation thereto.

C. INGERSOLL,
For the Defendant.

F. HOPKINSON, Esq.
Clerk Circuit Court.

NOVEMBER 6, 1841.

Cross interrogatories for T. Whitfield.

1. Were you one of said guard of the mail on route between New York and Hartford; during what season and what months of the year was said mail guarded, between 1st of June, 1833, and 31st March, 1835? Was not the manner of guarding it, that two persons were employed as guards, crossing each other each day on the routes? If any great number of persons were employed in guarding it, state how, and by whom it was guarded. Did more than one person on the same day go the same way with the mail to guard it? And give the names and residences of the guards.

2. If you testify as to Mr. Reeside having paid off or settled with Babcock & Company for the charges of mail guards, please to state when the settlement was made, whether verbally or in writing; and when any payment or payments were made, and how much money was in each case paid; and whether or not you were present at the settlements and payments to which you have testified, and each of them.

3. If you answer anything on the subjects inquired of in the 3d interrogatory in chief, please to state what you mean by extra team or

teams, and whether the coaches ran empty or full on the occasions of running said extra team or teams; what was the number of teams other than extra teams?

4. Did you, in the years 1833 and 1834, or at any and what time in those years, keep an account or accounts with the Chemical Bank in the city of New York? Have you your bank book with said bank, or can you obtain the same? If so, forward it with your answers hereto, or by mail or otherwise, under cover, addressed to the clerk of the circuit court of the United States, State-house, Philadelphia. If you have it not, or cannot do as requested, state the reason or reasons, and where you last saw it, and in whose possession or control you believe it to be. Did you keep said account on your own behalf, or in whole or in part as Mr. Reeside's agent?

5. Did you discount, or procure to be discounted, in said bank, or in any and what other bank, in the year 1833 or 1834, and when, the four following drafts, or either and which of them, that is to say, acceptances by the Post Office Department, of James Reeside?

	Drafts dated.	Amount.	Due.
1.	28th May, 1833	$3,000 00	$\frac{1}{4}$ Aug., 1833
2.	19th Oct., "	2,983 26	$\frac{25}{28}$ Feb'y, 1834
3.	24th Feb'y, 1834	1,000 00	$\frac{5}{8}$ May, 1834
4.	Same date.	Same amount.	Same day due,

or any and what other such acceptances, and of what amounts? Did you do so on your own account, or for account of Mr. Reeside, and what became of the proceeds; were they paid or applied to him, or for his benefit?

6. Since 29th April, 1835, have any and what amounts been paid for mail guards on the route from New York to New Haven, or from New York to Hartford?

7. Do you know any other matter or thing that may be useful to the United States in respect to their accounts or transactions with James Reeside? If so, relate the same particularly and in detail.

JOHN M. READ, *for U. States.*

It is agreed that the above interrogatories and cross interrogatories, with or without a commission annexed to them, may be exhibited, and the answers thereto taken and engrossed, and returned by Samuel Meredith, esquire, or William H. Maxwell, esquire.

JOHN M. READ, *for U. S.*

Endorsement.—No. 13, circt. crt., Oct. S., 1839—U. S. A. *vs.* Reeside—Interrogs. [and] X interrogs. to take depn. of Thos. Whitfield, sur rule of 6th Nov., 1741—filed Nov., 1841.

UNITED STATES
vs.
REESIDE.

J. M. Read and J. Cadwalader, for plaintiff, move for a rule to show cause why a new trial should not be granted, and for leave to move for such new trial on exceptions to the ruling of the court on

questions of evidence and matters of law—embraced in the charge of the court—without such motion being deemed a waiver thereof.

Motion received and notice thereof to be given to the opposite counsel, returnable on the first Monday in January, 1842.

6th December, 1841.

Endorsed.—No. 13, circt. crt., Octo. S., '40—U. S. A. vs. Reeside. Motion e. p. Plffs. for a rule and ca. for new trial—filed 6th Dec., 1841.

UNITED STATES
vs.
JAMES REESIDE. } Circt. crt.

Reasons for a new trial.

1. The jury have found a *verdict* against evidence, and the charge of the court, in allowing the defendant credit for work and services not performed by him.

2. The jury have found a *verdict* against evidence, and the charge of the court, in disregarding the effect of the account rendered by defendant, on the 31st January, 1839.

3. The jury have found a *verdict* in which they have not charged the defendant with money proved to have been paid by the Post Office Department to him, or to his order, and for his use and account.

4. The jury have allowed the defendant credit for items not established on his part by evidence sufficient to entitle him to a verdict.

5. The jury have found a *verdict*, the propriety of which cannot be ascertained by any standard furnished by the evidence in the cause.

6. The jury have disregarded the directions of the court as to interest.

7. The jury have allowed the defendant more than legal interest.

8. The jury have opened the accounts prior to 1832, to allow interest on undisposed items closed and settled, and no longer the subjects of controversy.

9. The *verdict* of the jury in favor of the defendant is for *more* than any rational view of the evidence he was entitled to claim.

10. That, after the jury were charged by the court, they were allowed to separate and again convened by adjournments, whilst they were considering of their *verdict*.

11. The counsel of the plaintiff reserve the privilege of adding such reasons as may be permitted by the court, under the motion made on the 6th instant, for leave to except to the ruling of the court on questions of evidence and matters of law embraced in the charge of the court, without such motion being deemed a waiver of the exceptions.

12. The verdict was against law, evidence, and the charge of court.

JOHN M. READ,
JOHN CADWALADER,
For plaintiff.

DECEMBER 9, 1841.

Endorsed: No. 13—circuit court, October S., 1839—U. S. A. *vs.* James Reeside—reasons for a new trial—filed 9th December, 1841.

THE UNITED STATES OF AMERICA
vs.
JAMES REESIDE.

Issue writ of error in the above case to the circuit court of the United States, for the eastern district of Pennsylvania. Original, October session, 1839—No. 13—same plaintiff and same defendant on behalf of the United States—ret. January sessions, 1843.

JOHN M. READ.

JULY 27, 1842.

F. HOPKINSON, esq., *Clerk.*

Endorsed: U. S. A. *vs.* Reeside, precipe for writ of error—filed 29th July, 1842.

UNITED STATES,
Eastern district of Pennsylvania, } *sct.*

The President of the United States, to the judge of the circuit court of the United States, in and for the eastern district of Pennsylvania, greeting: [SEAL.]

Because that, in the record and process, and also in the rendering of judgment in a suit before you, between the United States of America, plaintiffs, and James Reeside, defendant, in a plea of trespass on the case and ca., manifest error has intervened to the great damage of the said United States of America, as in their complaint has been stated; and as it is just and proper that the error, if any there be, should be corrected in due manner, and that full and speedy justice should be done to the parties aforesaid in this behalf, you are hereby commanded that, if judgment thereof be given, then, under your seal, you do distinctly and openly send the record and process in the suit aforesaid, with all things concerning them, and this writ, so that you have the same before the chief justice and associate justices of the Supreme Court of the United States, on the second Monday in January next, at the city of Washington, being the seat of national government; that the record and process aforesaid being inspected, they may cause to be done thereupon what of right ought to be done.

Witness the honorable Roger B. Taney, chief justice of the Supreme Court of the United States, at Philadelphia, this first day of August, A. D., one thousand eight hundred and forty-two, and in sixty-seventh year of the independence of the United States.

FRA. HOPKINSON,
Clerk circuit court.

Allowed by—
ARCHIBALD RANDALL.

UNITED STATES,
Eastern district of Pennsylvania, } *sct.*

I certify that the foregoing are true and correct copies of all and every paper relating to, or in any way connected with, the trial and

result of the aforesaid cause, now on file or remaining of record in the office of the clerk of the circuit court of the United States, in and for the eastern district of Pennsylvania, in the third circuit.

In testimony whereof I have hereunto subscribed my name, and affixed the seal of the said court, this twenty-second day of [SEAL.] January, A. D., eighteen hundred and forty-seven, and of the independence of the said United States the seventy-first year.

GEORGE PLITT,
Clerk of circuit court.

Letters testamentary and copy of the last will and testament of James Reeside, referred to in the foregoing petition:

COMMONWEALTH OF PENNSYLVANIA, } ss.
City and county of Philadelphia. }

By the tenor of these presents, I, William Piersol, esq., register for the probate of wills and granting letters of administration, in [SEAL.] and for the city and county of Philadelphia, in the commonwealth of Pennsylvania, do make known unto all men, that on the 7th day of September, A. D., 1842, at Philadelphia, before me, was proved and approved, the last will and testament of James Reeside, deceased, (a true copy whereof is to these presents annexed,) having, whilst he lived, and at the time of his death, divers goods, chattles, rights, and credits, within the said commonwealth, by reason whereof the approbation and insinuation of the said last will and testament, and the committing administration of all and singular the goods, chattels, rights, and credits, which were of the said deceased, and also the auditing the accounts, calculations, and reckonings of the said administration, and absolute care of the same, to me are manifestly known to belong, and that administration of all and singular the goods, chattels, rights and credits of the said deceased, any way concerning his last will and testament, was committed to Mrs. Mary Reeside, sole executrix in the said testament named, she having first been duly sworn well and truly to administer the goods, chattels, rights, and credits of the said deceased, and make a true and perfect inventory thereof, and exhibit the same into the register's office, at Philadelphia, on or before the 9th day of October next, and to render a true and just account, calculation, and reckoning of the said administration, on or before the 9th day of September, one thousand eight hundred and forty-three, or when lawfully required; and also to diligently and faithfully regard, and well and truly comply with, the provisions of the act relating to collateral inheritance. In testimony whereof I have hereunto set my hand and seal of office, at Philadelphia, the 9th day of September, in the year of our Lord one thousand eight hundred and forty-two.

WILLIAM PEIRSOL, *Register.*

Know all men by these presents, that I, James Reeside, of the city of Philadelphia, being of sound and disposing mind, memory, and understanding, but aware of the uncertainty of life, do hereby make,

ordain, and publish this as my last will and testament, hereby revoking all former wills by me made:

First. I do hereby order all my just debts to be paid.

Second. I do hereby give, devise and bequeath unto my beloved wife, Mary Reeside, and to her heirs and assigns, absolutely, forever all my estate, real and personal, whatsoever and wheresoever, of every kind, nature, and description soever, including the debt due to me by the Post Office Department of the United States government.

And I do hereby nominate and appoint the said Mary Reeside the sole executrix of this my last will and testament.

In witness whereof, I have hereto set my hand and seal, at Philadelphia, the thirty-first day of August, A. D. 1842.

J. REESIDE. [SEAL]

Signed, sealed, and published, and declared by James Reeside as his will and testament, in our presence, this 31st day of August, A. D. 1842.

H. G. ERBEN,
JNO. YARD, Jr,
W. L. HIRST.

CITY AND COUNTY OF PHILADELPHIA, *ss.*

REGISTER'S OFFICE, *September* 7, 1842.

Then personally appeared, John Yard, jr., W. L. Hirst, and H. G. Erben, the subscribing witnesses to the foregoing will, and on their affirmation and oaths did say, that they were present, and did see and hear James Reeside, the testator therein named, sign, seal, publish, and declare the same as and for his last will and testament, and that at the doing thereof he was of sound disposing mind, memory, and understanding, to the best of their knowledge and belief.

JNO. YARD, Jr.
W. L. HIRST,
H. G. ERBEN.

Affirmed, sworn, and subscribed before me, the date above.

J. B. SEWALL, *Dep'y register.*

SEPTEMBER 9, 1842.

I do swear that, as the executrix of the foregoing last will and testament of James Reeside, deceased, I will well and truly administer the goods, chattels, rights, and credits of said deceased, agreeably to law; and that I will comply with the provisions of the law relating to collateral inheritance.

MARY REESIDE.

Sworn and subscribed before me the date above, and letters testamentary granted unto her.

J. B. SEWALL, *Dep'y register.*

Whereupon, all and singular the premises aforesaid being seen and

heard, and by the court here fully understood, it is ordered and adjudged that the said motion be overruled, and the prayer of the petitioner rejected, which is accordingly done.

Test: JNO. A. SMITH, *Clerk.*

Writ of error produced.

And whereas afterwards, to wit, on the day January, in the year of our Lord one thousand eight hundred and forty-nine, the said Mary Reeside, administratrix of James Reeside, by her attorney aforesaid, produced and filed in court here the United States writ for the correcting of errors of and upon the judgment aforesaid, directed to the judges of the circuit court of the District of Columbia, in the county of Washington, and in pursuance thereof, and according to the form and effect of proceedings of the law in such case made and provided, a transcript of the record of the judgment aforesaid, and all things thereunto relating, with the writ of error aforesaid, and a copy of the appeal bond hereunto annexed, are hereby transmitted to the said Supreme Court accordingly.

Clerk's certificate and seal.

In testimony whereof, I have hereunto subscribed my name and affixed the seal of said court, this twelfth day of February, 1849. [SEAL.]

JNO. A. SMITH, *Clerk.*

Notes of the evidence and names of witnesses taken down by the judges of the circuit court of the United States for the eastern district of Pennsylvania, sitting at Philadelphia, in the trial of the case of the United States against James Reeside.

UNITED STATES, *vs.* JAMES REESIDE, } *October term*, 1841.

Case in assumpsit, non-assumpsit, payment and set off.

Mr. Cadwallader opened the case for the United States.

Suit is for $32,708 62, composed of over payments made to him in 1833–'34, beyond the amount due for transporting the mail by contract from 1831 to 1835.

1st April, 1832, balance $2,222 21 due by defendant; accounts adjusted.

Paid him $491,719, deduct $122,000, drafts discounted for use of defendant $19,500, $399,250—$146,000, balance $345,000.

Fines $4,300, $2,100 remitted—balance $2,200.

Cr. Transportation $249,000, extra allowances $67,000—$317,000.

Defendant claims a balance of $149,000, difference between parties $180,000.

Difference on cash $92,000, transportation $89,000—$181,000.

Cash items at Pa. $62,500, paid defendant $15,000, paid by Gouverneur to defendant $14,000 of drafts—$92,000.

Transportation items ex. allowances $60,000, ex. duties $27,000, paid improperly.

3d Story, 1987–8, act of 1825, section 10, as to contracts for carrying the mails, sec. 43. Contract with defendant did not conform to these parts of the law. Improper allowances were made for services of routes discontinued.

In other cases, defendant acquiesced in disallowance. Extra allowances were made for mail guards, which defendant was bound to furnish by contract.

4th Story, 2468, sec. 17, suits to be brought to recover money improperly paid for extra service.

After the accounts were settled, defendant offered additional credits, but no vouchers, evidence, or explanations were offered. The accounting officers refused to act on them. *Query*—Can they be now considered.

22d September, 1841. Offer a treasury transcript duly authenticated. Mr. Coxe objects.

Some items are inadmissable, others not in time. Read subject to objections which defendant reserves.

9th August, 1839. Offer an adjustment of the accounts of defendant. Read subject to same and other objections.

1st February, 1839. Account of defendant presented by him as containing his claims, and E. E.

30, 31, 35, to 40, and 47, are amounts charged as paid by Mr. Page.

James Page.—I was postmaster at Philadelphia from 1833 to 1835 inclusive; paid each draft here stated, and charged to defendant and credited to me.

No. 366, in official statement, draft February 1834, payable in April for $1,000. On the 28th April, 1834, paid $1,000 in addition to Sch. Bank, $1,000.

Feb. 24, 1834, payable 8th May, paid $1,000 more, in addition paid no other drafts at those times other than to defendant, as I.

What was done with this money, cannot answer in a word.

No. 30, the money was paid to the bank holding the draft, and the draft put to defendant as my voucher; No. 31, do.

No. 35, was accepted, amount raised and deposited in Western Bank to the credit of the department. I charged discount on this draft to defendant. Discount $156 87, which was allowed.

No. 36, paid by me at the Sch. Bank, defendant's drafts on department and accepted.

No. 37. Draft by defendant on me, accepted and discounted by me, deposited in W. Bank to credit of department.

No. 38. Defendant's draft taken up by me, transmitted to department and credited to me, drawn on and accepted by department, paid at F. and Mechanics' Bank one, and the other at the Sch. Bank.

No. 39. Defendant's drafts paid, and taken up by me at F. and M. Bank, drawn and accepted on department.

No. 40. Draft on me by Postmaster General, discounted by Mog. Bank, and deposited in W. Bank to credit of department.

No. 47. Defendant's drafts on Postmaster General accepted, discounted at M. Bank, and deposited in W. Bank credited to defendant.

The two drafts of 24th February, 1834, paid to Bank of Schuylkill.

Don't know whose drafts, but recollect of paying none in which defendant was not connected.

Defendant repeatedly called on me in reference to the embarrassments of the department. It was embarrassed in latter part of 1834 and beginning of 1835.

These moneys were raised to relieve department, in four large drafts of 10,000 dollars each. Further examination postponed to examine Mr. Butler, to be resumed after.

Benjamin F. Butler. Was counsel of United States in case *vs.* Samuel L. Gouverneur, of which this is the record:

Question. Were items No. 53 to 60, in controversy in that case? Defendant objects to, (witness agreed to be examined subject to objections.)

This suit was tried in May, 1839; certain drafts or papers marked No. 53 to 60, were claimed by Gouverneur as credits to which he was entitled from the United States, on the ground that he had paid them for the use of the department; he was Postmaster of New York at this time. He gave evidence concerning them to support the charge, and United States gave evidence that they were private transactions between Gouverneur and Reeside, perhaps it was applied to certain items.

Those referred to in the verdict were none of these—these from 53 to 60 are separate from those in verdict.

Credit was claimed for the 6,000 dollar drafts in the verdict by Gouverneur. He claimed 53 to 60 when case went to jury, and resisted by the United States, and the question was put to jury as to their allowance as credits.

The case was complicated, involving many accounts. Each counsel made statements for the jury; this is mine; this is statement of defendant's counsel, and this is mine in reply to defendant, marked B. F. B., No. 1, 2, 3.

United States claimed from jury 94,034 dollars at beginning of trial; I claimed 100,000 dollars. I admitted credits for 26,000 dollars. In the 74,000 dollars I excluded these drafts 53 to 60.

I have a statement furnished me by the jurors soon after the verdict, this is the original statement.

No. 4. As the basis of the verdict, believe it is in the hand writing of Edmund M. Taylor.

This paper was applied for to give information of the state of accounts there.

One or two of Gouverneur rendered to the department, was given in evidence at the trial.

Paper marked F. No. 5, was given in evidence by the United States, it was a certified copy of Gouverneur's account furnished the department, in which he claims credit for items No. 53 to 60.

These are my notes of that trial—believe these notes are in substance correct, so far as they purport to be so.

23d October. James Page, ex-contractor. Know nothing more of the other drafts than I have stated.

No. 36. I was specially directed by letter from Mr. Browne, a clerk in the department, to provide for the payment of those drafts when they fell due; so far as I know, the four 10,000 dollar drafts were the only ones that went to credit of department.

No. 92. In treasury transcript, credits defendant with 10,000 dollars, to 97, No. 31 to 37, so No. 40 to No. 47.

No. 400. Treasury transcript account of James Page with the department, credit 15th August for No. 30.

401. Treasury transcript, account James Page with the department, (?) credit 1,500, for No. 31.

432. Letter 25th October, 1834, from O. B. Browne to J. Page, to raise 10,000 dollars by a draft on him.

Letter 26th October, 1834, from defendant to Page, and a P. S. by O. B. Browne to same.

Letter 21st October 1834, certificate of deposite in W. Bank and Page's direction.

426 to 432. Account with Page as to No. 35; 29th January, credit for 10,000 dollars, 28th October.

433. Letter of O. B. Browne to Page, confidential, 12th September, 1834, as to No. 36, wish Page to pay these 4 drafts.

17th September, 1834. In Page's account, credit for these 4 drafts.

435. As to 37, letter of O. B. Browne to Page, to accept and discount drafts deposited to credit R.

17th November, 1834. Answer of Page, same day certificate of deposite in W. Bank.

Page's account, 14th February, 1st May, 1835, 14th February, 1835, debtor defendant for 10,000 dollars, credit Page.

436. As to No. 38, 16th February, debtor defendant 5,000 dollars, credit Page.

441. As to No. 39, 7th April, debtor defendant for 5,000 dollars, credit Page.

448. As to No. 40, letter 11, February, 1834, E. F. Brown to Page to accept, &c. Deposits proceeds in W. Bank, 14th February, certificate of department, debtor department 15th April.

456. As to No. 47, letter Page to Suter, 21st April, deposited 10,000 dollars to credit of defendant; 4th September, 1835, in Page's account, credit defendant, J. R., draft for $10,000; 8th July, 1835, read letters from Page to Laughborough.

Mr. Page. 18th February, 1835, I had a note discounted to meet one of the 5,000 dollar drafts. Offered the record of the suit of United States *vs.* Sam'l Gouverneur, in the circuit court of the southern district of New York, to show that there was such a proceeding. Objected. Admitted. Defendant excepts.

16th January, 1839. Plaintiff called for the production of a letter of this date from the Auditor of the post office to defendant.

14th October, 1841. Notice to defendant to produce papers, &c., per account.

16th January, 1839. Letter from J. K. Gardiner to defendant,

calling for information as to certain drafts for $25,000, charged by S. Governeur to United States.

Peter G. Washington: After the date of the above letter, and before the trial of the United States *vs.* S. Governeur, what conversation had you on the subject of this suit with Mr. Ingersoll? Objected, till the authority of witness and Mr. Ingersoll to act for the respective parties is proved.

I am chief clerk of Auditor's department in post office, and it falls to my charge to superintend the collection of accounts, and acted under special instruction from Auditor. Mr. Ingersoll was introduced by the Auditor to me as the person having charge of Reeside's business. I perused the letter from Auditor to defendant. The preparation of Governeur and Reeside's accounts was at the same time—the former in advance. I wanted information as to the 25,500 dollars on Reeside's drafts, paid by G., and charged by him to the United States. I prepared a letter, 20th August, 1837, from Auditor to defendant—stated the substance. Defendant, after some time, answered the letter, to which I replied. Some time after, Mr. Ingersoll called at the office on the subject of the account. In beginning of 1839, Mr. Ingersoll and Reeside came to the office together, and had several conversations with me on the subject of R.'s accounts. They were there afterwards together; Ingersoll spoke of the accounts—demanded a settlement. I stated to R. the claim of Governeur for a credit for R.'s drafts on Governeur, and showed him some of the papers relating to this claim—also Mr. Ingersoll, as representing R. R. said he was surprised that Mr. G. should make such claims. Query. Did R., during the pendency of these transactions, refer to Mr. Ingersoll as representing him? Answer. They came to the office together, and Mr. Ingersoll acted for R. in his presence; cannot recollect their remarks—sometimes one and sometimes the other spoke about the accounts. Don't remember if R. referred to Mr. Ingersoll as representing him.

18th May, 1836. R. to Kendall, Postmaster General, as to Governeur's drafts—offers explanations, &c.; everything relating to them.

T. S. 31st July, post marked 31st July.

27th September, 1837, enclosing one from R. to him, (of 22d September,) Mr. Ingersoll to the Auditor.

22d September. R. to Ingersoll, as to drafts of Governeur's; never refused to answer his queries.

Query. In the conferences of the beginning of 1839, the subject of G.'s drafts were discussed with each as to their respective responsibility, and the effect of G. sustaining his claim was explained. I told them both that, if G. was credited with these sums, R. would be charged with them. Objection withdrawn. I stated to R. that a suit was pending in New York by United States *vs.* Governeur. R. expressed his willingness to furnish the papers relative to these drafts. We never furnished them—not receiving them.

16th January, 1837, I mentioned the subject to Mr. Ingersoll, who stated that R. felt a delicacy in furnishing these papers, unless officially called upon. I said we would remove that difficulty, by addressing a letter to him on the subject.

Some days after, at the Auditor's office on business of R.'s accounts,

Mr. Ingersoll, and mentioned the subject to him, and that the papers had not been sent on. Some discussion took place between us, as to the terms of the letter. He said it was too peremptory; I said the terms were designedly used to free R. from the difficulty which he had before alluded. The result was, that R. had come to the conclusion not to furnish the papers; don't remember if he said there were any papers on the subject.

Reeside was not subpœnaed as a witness on Governeur's trial. Mr. Ingersoll said the regular way was to bring R. and his papers before the court by proper process—this after Mr. Ingersoll had stated R. conclusive. G. was in Washington at the same time; think Mr. Ingersoll admitted the propriety of the terms of the letter, (16th January,) and he then resorted to other objections, that G. was a strong man—a man of papers—and that, in short, R. had come to the determination not to produce them.

I had labored to prepare G.'s account, and was very anxious for aid from R. Object of Mr. Ingersoll was to bring about a settlement of R.'s account. He sent a copy of R.'s appeal to the President; and Auditor made a communication to the P. M. General, on the subject of the appeal.

Query.—Don't you remember that Col. Gardiner and I went through the account item by item, in order to prepare the cause for a jury trial?

Answer.—This would be unusual, and refers accounts to clerks in first instance—don't remember the fact. In a conversation before Mr. Ingersoll, and certain items were referred to, to be allowed or not, it did not refer to all the items in the account—after this, the account was put into my hands. Remember some items in Mr. Page's account; think R. then present—whether he was present in my room when Mr. Ingersoll and I had conversation.

I did not then know that Mr. Ingersoll was counsel for Mr. Gouverneur, nor till I saw him in New York at trial. Believe that R. and Ingersoll were at the office more than once.

R. stated the aggregate of difference under different heads. I had ascertained that there were $62,000 difference growing out of Page's transaction. He said he had not admitted them in his account, because he was uncertain about them—had great confidence in Col. Page; and whatever he said, would be right.

Remaining cash items of differences, he said he did not think he received any money after Mr. Kendall came into office—we referred to the existing difference in the schedule.

This paper is the decision and remarks of the Auditor on R. accounts; it was prepared to be furnished to defendant or his counsel; don't know if a copy was so served.

Mr. Ingersoll.—Is not this the very account which Col. Gardiner and I looked over in your room? Answer.—It is not the paper, but these are the items about which you conversed; but think it was before this statement was furnished.

I knew nothing personally of the state of P. Office till Sept. 1836. I then entered on my duties in the P. Office Dep't, before this Reeside's account had been stated.

Edward M. Taylor.—Was a juror in the trial of U. S. *vs.* Gouverneur, in New York.

Query.—What was amount claimed by U. States, beforethe jury? Mr. Coxe objects.

Record of former suits is evidence of subjects of controversy, but it it is competent to aver that certain items were not given in evidence so as to sustain a new suit upon them. R. is charged with these drafts; on what ground we don't know. U. States may take their own order.

Objection overruled. Defendant excepts.

Plaintiff claimed 74,000 dollars.

15th Nov., 1832. Contract between R. and J. Babcock & Co., for oute No. 425, from New Haven to New York.

15th Oct. 1831. Contract between R. and U. States, for route No. 951, from Philadelphia to New York.

Query.—What items in theclaim $74,000 would make the verdict rendered? What items taken from this account would make the verdict 26,000. Objected 29th Oct.

Query.—What items make up the verdict? Obj. sustained. Plaintiff excepts.

Mr. Butler proved that an account was presented by the U. States; and he stated the claim in writing to the jury, and gave it to them: that must be produced.

Verdict is conclusive on all the items. No matter on what ground, it cannot affect R. per. se.; but other evidence is open to U. States; and the suit *vs.* Gouverneur, is no bar to a suit *vs.* R. for the same items on proof of the money having gone to his use.

We do not now enquire whether R. is liable by his refusal to give up documents. It will be time to decide this when this item is put on this sole ground. Jury not competent to prove how verdict was made up.

The connexion between R. and G., by contracts for routes 425 and 951, don't change this question.

Report of verdict is, that G. must have credit for every item of the 74,000 beyond the 26,000 dr.

Objection sustained. Plaintiff excepts.

Gouverneur S. Bibby.—Was Cashier of P. Office in New York, from 1833 to 1836. I paid drafts No. 578, 960, by the P. O. Department, on Mr. Gouverneur, the Postmaster at New York, in favor of defendant; they were put away with other drafts, and destroyed by the burning of the New York Post Office, in December, 1835.

They were sent to the Mon. Bank for collection; we took them up; drafts were sent on for 10,000 dollars, when we had not half the money, and we had to run about and get the money.

The instructions in relation to them, were sent to Mr. Gouverneur.

Samuel L. Gouverneur.—Was Postmaster at New York, from 1829 to 1836.

Query.—Were items No. 53 to 60 claimed by me as credits on the trial of the U. States *vs.* me, in New York? Objected.

Both sides mistaken, the *question*, which is whether the payment of these drafts by Gouverneur, creates a charge *vs.* defendant. Objection overruled.

These accounts were paid by me; but don't know as they were the drafts as stated in this printed. My entry is—paid J. K. drafts: not saying on whom. The 3d 2,000 were paid by the order, and special instructions to pay on their own account; they were drawn on the faith of a draft of their own, accepted by themselves—drawn on their own credit. This paper had not as good credit as Mr. Reeside. Post Office Department would draw and accept drafts; but not being able to negotiate them for the want of credit, they would then borrow Reeside's draft to raise money on them, to take up their own acceptances.

That was the case with these three drafts; they come through the Patriotic Bank.

H. B.—This was a very common practice not confined to these drafts. The items 334, 50 is the balance of some of these drafts—57, 8, 9–60; the same remarks apply to these items. My transactions with the dep't, on these items, were all alike. I had no connexion with R.; they were not private transactions, as alleged by dep't—which was the only reaaon why they refused me credit for them.

I had frequent conversation with Mr. Kendall on this subject; he asked me if he gave me credit for these items, who he was to charge. I replied that was a matter for him; but I would not engage to find any individual to charge.

The bad credit of the dep't was at all times and to every extent: they would have failed many times but for me. I often raised money for them—once $40,000, on their. R. often prevented them from failing, by raising money for them.

These items were apparently on account of R. contract, but not so in fact. The dep't would draw checks and charge them to transportation, but did not so apply them; these checks would pass through my hands.

I do know that the accounts of, and at the dep't, were kept purposely to deceive, in order to elude the investigation of a Committee of Congress, then there engaged on that subject.

The $40,000 credit was not the same loan which was 35,000, in March, 1834, in addition to the 40,000. The department paid 2 per cent. a month for it. I speak of the committee of 1834. These transactions were in Mr. Barry's time. When I speak of deceptive accounts, I go all through.

No committee sitting while Kendall was Postmaster General, as I know of.

During Barry's administration, they put nothing on the books—during Kendall's, they put on everything they could.

Drafts of R. on dep't, on theirs, on me in his favor, were not entered on books as I believe.

Drafts 53, 4, 5, given in evidence—2,000 each.

Mr. Read states that these drafts were taken from the files of the court in New York, in the case of U. States *vs.* Gouverneur.

No. 453. Of debits No. 44—differences.

William J. Baker. Am discount clerk of Farmers' and (20th April, 1835) Mechanics' Bank, in Philadelphia. This is the discount book. R. drawer and endorser. D. Doovance, endorser and discounter—accepted by R. C. Mason.

Treasurer post office, 16 April, due 15–18 July, $4,500.

Defendant calls for proof of payment.

Joseph Robstur. As to No. 454, No. 45, draft 16 April, 1835, payable 20–23 July.

Was discount clerk of Sch. Bank—this is discount book. R. C. Mason, treasurer drawer; R., endorsed and discounted 4,500; don't question it was paid at Washington—it was sent there for payment. (Defendant calls for proof of payment.) We kept an account with Bank of Metropolis—offer the cash book of the Post Office Department, No. 2, for 1834, '35.

Nicholas Fartel. Am clerk in Post Office Department; this is cash book of department; these entries are made by me, in my hand writing, taken from requisitions.

William C. Libscomb. Was a clerk in the Post Office Department; my duty was, after payments had been made, to take original numbers, (vouchers,) to compare them with the entries, and ascertain if there were any discrepancies. This draft for $4,500 was in my possession; compared and found correct.

I state this from my check mark on cash book, as entered here, in both items 44 and 45.

Check 4,187, on Bank Metropolis, numbers 4,500 and 205,604.

21st July, 1835. Letter from P. S. Laughborough, to department to deposite in Bank of Metropolis $173 25, to make up $9,000.

23d July, 1835. Letter, R. Smith, crediting Sch. Bank, $4,500.

No. 104, on credit side of office account; credit with draft $8,826, $75,105 do., $173 25—$9,000.

Peter G. Washington. Searched in office at Washington for these drafts; they are not to be found. I have a draft of same date, same parties, same amount, payable 25th July, given me by Mr. Coxe. Objection overruled. Cash book read as to 44 and 45.

18th July, check on Metropolis Bank, $4,180; 23d July, do. $4,187, for $4,500 from R. Smith, cashier of branch Bank of United States.

457. October, No. 48, 458, No. 49. Draft 28 June, 1835, by R. P. P. Laryb, treasurer Post Office Department, payable 25th October, 1835, to order of R. $3,000, account of transportation, accepted, &c., if drawn bills his contract. Endorsed by R., and by Sch. Bank to R. Smith.

No. 401. Check of P. M. General, on Bank of Metropolis to R. Smith, $3,000, 28th October, 1831.

No. 49. Draft, 15th June, 1835, R., favor of A. Lothrough, on treasurer post office, $2,123 60, discounted 7th November, on account of transportation—accepted on same condition; paid at bank.

No. 483. Check of Post Office Department for $2,123 60 to 6. Thomas Caskin.

No. 106. Credit in office account, 5th November, 1835; cash deposited in Bank Metropolis, $3,000, by R.

Transportation of mails.

Differences No. 2, p. 6 in printed account. Defendant claims $126 express mail.

Credit item in office account 110. R. is *co.* for express mail. $5,512 50; No. 111, $26,250—$5,975, rejecting $6,825, which United States say is over charged.

15th October, 1831. Contract 851, from Philadelphia to New York, original bid is $6,000—daily 4-horse post coaches. R., to expedite so as to run through in 13 hours, two times a day, double armed guard, at his expense; and additional expedition, and government expresses, at $13,000; and if two mails a day, $1,500 for winter.

Endorsed. Increased service from Byn. R. entitled to the $13,000 and $1,500; for an extra mail by order of Postmaster General, $3,250 per annum. Dispensed with—see entry for a contract, 19th November, 1833. Extra mail dispensed with, 25th April, 1833, by arrangement. Allowance of $3,150, to cease from 25th April 1833.

Attached to contract paper of that date, J. R. engages to run in twelve hours between Philadelphia and New York, according to printed proposals of this day; and to carry additional mail to Trenton, to lap on, &c., and so from New York to Bk., to connect with steamboat line, 2-horse stage line, daily, during steamboat navigation, per advertisement $5,125.

United States make full allowance up to 1st November, 1833, though we shall prove the discontinuance of extra mail in April preceding.

S. R. Hobbie. Assistant Postmaster General at the time of curtailment of this additional allowance of $3,150; contracts were under my supervision. In April, 1833, arrangement was made under my agency, for increasing expedition from Philadelphia to Boston, so as to go to New York in twelve hours, and supplying the way routes. The $5,125 was for both objects, and was expressly required to supersede the extra mail, at $3,150. Agreement between me and Reeside; curtailment to take effect 25th April, 1833. But in fall, on application of Reeside, he was to be paid till October or November, because service was in part of year only during suspension of steamboat navigation, and service was rendered. This paper is in hand-writing of persons as marked—body hand of Mr. Taylor.

3d November, 1834. Letter, W. T. Barry, from J. K. Mr. Hobbie agrees to proposition for ¾. Mr. Brown treasurer; and Barry allows for ¾ a year, and one month extension, as in account.

19th November, 1833. Hobbie to Reeside letter; arrangement of April, 1833; extra mail to cease.

22d April, 1833. From Hobbie to Reeside—furnish account of extra mail.

22d May. From Hobbie to Reeside, No. 2; horse line from Philadelphia to Trenton, as you contracted, &c., &c.

22d June. From Hobbie to Reeside; complaint on same subject.

22d July. From Hobbie to Reeside; complaint on same subject.

1st August. From Hobbie to Reeside; complaint on same subject.

9th November. From Hobbie to Reeside; failure of the New York mail.

19th July, 1834. From Hobbie to Reeside, as to mail from Brunswick.

The April arrangement was made in general post office; there were other propositions, but they cannot be found; this writing attached to the contract, though not the only, is the most authoritative writing on the subject—in any hand-writing.

Daniel Brown. Was employed by a company on the route from

here to New York, from 2d April, 1833, till July, and then left them and was employed by Reeside till March, 1834.

The other company was the People's Line Company.

Had charge of Reeside stock on mail and passenger line from Philadelphia to New York—entire control for some days—then gave up from here to Holmesburgh, but kept residue.

Carried two daily lines of mail through till near 1st of March, 1834, when we made an arrangement to take the R. R. from Camden to S. Amboy, and to move the stock from Bk to P. Amboy, and run the mail to railway. Reeside ordered me to take the stock from Bk. to Philadelphia, which I did. Left his employment and went to the South.

The fast line took the large bags, which were not opened between Philadelphia and New York. Started at first, at 4 from Philadelphia, and after at 5 from Philadelphia, and 4 from New York. Sometimes southern mail did not come in till 9 and 10; roads were bad and heavy loads, and hard to connect at New York. Reeside ordered me to do it, any expense by. The other line I considered the daily mail line from Philadelphia to New York, carried in different ways. There was a mail line from here to Bristol, sometimes by one and sometimes—and have stage, &c., &c.

This line was kept in different ways regularly once a day.

Knew of no other mail except an extra coach in winter of 1832, and 3 for way mail.

A winter line was put on when the summer line failed.

There was no express line with defendant's stock during this time.

John A. Weart. In 1833–'4–'5, lived in Trenton—engaged in staging; knew of no extra mail except a horse-back mail in 1833. Continued for a month or a little over; never knew or heard of any other two mail lines passed through Trenton.

William Hobeson. Was clerk in the post office, Philadelphia, from 1st May, 1833, till 1841. Knew of no extra mail before 1836; I think not earlier than 1835, at all events. Had charge of the Register of Mails from August, 1835. Offer a statement of R. contracts with the Postmaster General, published by R. in 1834. Distance of each route, &c.

Route No. 951, distance ninety miles. Our annual compensation, $20,500; extra annual compensation, $5,125—$25,625. Present annual compensation—same sum. Attached affidavit of J. Taylor, 27th June, 1834, a clerk in Post Office Department, to the truth of this statement.

25th June, 1834. Letter of Reeside to editor of Globe, 12th June, do. do.

John Taylor. Was clerk in the Post Office Department in 1834. Made out original of this statement at R. request, by permission of Mr. Browne, or the head of the mail contracts, and handed it to R.

R. did not assist me in making this statement, I made it myself. I made another a little more accurate, as to the termini of the routes.

Peter G. Washington.—This is the draft received from Mr. Coxe; (27th October) it is payable 25th July.

Differences No. 3. Defendant's account, p. 5, 58,000. Credit item 115 39; 875; 116;—17,198 75.

15th October, 1831. Contract for routes, 1031—1170. Cr. No. 117, $6,175—57,135 50.

R. Slaymaker & Tomlinson and U. S., from Philadelphia to Pittsburg. No. 1031, at 25,000; R. half.

1170. From Pittsburg to Wheeling, 6,700 per annum; R. the whole.

If route discontinued, so much of contract not binding; 1 month extra pay allowed.

24th September, 1824, endorsed curtailed from W. to Wheeling; 32 miles deduction—741 for one year.

Mr. Hobbie. A curtailment was ordered on this route in latter part of 1834. Postmaster General ordered the route to stop at Washington, Pennsylvania, where it met the Baltimore line.

24th September, 1834. From Hobbie to R., H., & Tom., from W. to Wheeling discontinued, and 741 deducted, &c.

John W. Weaver. Was interested in route 1171, as one of the company; so of 1031, from Cg. to Wg.

Run line from Pittsburg to Wheeling, from 1st January, 1833, till 31st December, 1835. Through R., received notice of discontinuance of line from Washington to Wheeling, and it was thence discontinued some time in 1834. Cease running mail on that route in fall of 1834.

8th December, 1832. This is an original agreement. R. & Co., convey to J. W. Weaver the route from Pittsburg to Wheeling, he to be bound by the contract of R. & Co. with Post Office Department.

Difference No. 4, route No. 1031; cr. item No. 118; cr. R. 8750. R. claims 37,500, endorsed on contract 1031; allowance of 10,000 for ex. newspapers curtailed from 1st December, 1833.

Mr. Reed. This extra allowance was not in original contract; half to R. and half to S. & T. R. is cr. His half to January, 1834—dispute is after 1st January, 1834.

Mr. Hobbie. While retrenching in 1833, we found this extra allowance 1031. It was by order of the Postmaster General discontinued from 1st December, 1833; one month extra allowance made; it take effect from 1st January, 1834.

19th November, 1833. Hobbie to R., S. & T. Postmaster General directs me to pay that extra allowance of 10,000 for 1031. Extra newspapers is withdrawn, service being performed on route from B. to W. Reason of this allowance was that the increased expedition on the Philadelphia and Pittsburg route increased the newspaper matter. It was withdrawn on account of this matter being carried on route from B. to H. This was owing to the increased expedition from Philadelphia to Baltimore.

The 8750, is to correct R.'s account, who claims credit for the whole extra allowance. No extra allowance was made at the time to St. & St., for this extra matter on B. and W. routes. They had applied for 25 per cent. when the withdrawal took place, and after for 50 per cent., and it was allowed afterwards. Barry allowed 50 per cent., on the contract of Stockton & Stokes in the latter part of 1835; it formed an

item in suit, United States *vs.* Kendall, and was finally paid in 1838, after decision of Supreme Court; S. & S. urged the breaking up of the national road as one reason for the extra allowance.

The charge of newspaper matter arose from increased expedition.

I should suppose that all the extra newspaper matter would go by the Wheeling route after this—this is only opinion, not from personal knowledge. Mail matter intended for north part of Ohio and Pennsylvania goes now by Pittsburg.

J. W. Weaver. Was one of the company at the time of this extra allowance matter began to increase in 1831—in '32 very heavily; decreased one-half in 1833. Never heard of this extra allowance till December, 1834, nor any of the company till the investigation by a committee of Congress into the affairs of the department—had not heard any one speak about it before. Contract price through was $27,000. No part of this extra allowance was paid to any of the company in 1832 or '33.

William Lewis. Was agent for R. in 1828; March 25th went to Cumberland; 1831, came back. R., and Stockton, and Stokes, exchanged stock. I then came to Ch'g, and remained there two years.

In fast line, mail matter increased for two years; very heavy on Sundays and Fridays. Went to Bedford in October, 1833; staid there two years; two days in week had to exclude passengers.

P. 8. Reeside's statement of his contracts for 1177. Ordinary annual compensation, 27,000; extra annual allowance, 10,000; curtailed, 10,000; present annual compensation, 27,000.

26th September, 1834. Offer the journal of the Post Office Department.

To sundries debtor 8,750, to S. Slaymaker, from 1st April, 1832, to 1st July, 1833, $6,250; from July to 31st December, 1833, $2,500—$8,750.

John Suter. Was pay clerk in pay department. The extra allowance of 10,000, was to be equally divided between R. and Slaymaker.

Difference No. 5 route, R. account, page 6, claims 15,466 72; credit item 122; credit 7,733 36.

15th October, 1831. R. and Postmaster General contract from Bedford to Washington, and back, three times a week, in four-horse post coaches, for 29,000 a year.

29th December, 1831. Endorsed on contract; contractor directed to carry the mail daily.

19th November, 1833. Endorsed; contractor informed that, as he carried the mail on three times a week, the extra compensation for daily mail, 3,866—66, ceased from—of—33. Then daily mail ceased, August, 1833.

Mr. Hobbie. We found the contract arrangement for three times a week, and after a change to daily. The four additional trips were discontinued, from 1st December, 1833: one month extra allowed; discontinued because service was not performed.

The additional allowance was made out by calculation of proportion of 4 to 3.

28th August, 1833, from clerk of Hobbie to R.; you carry the mail

on route 1198 only three times a week; a prompt explanation is required.

19th November, 1833. As you run only three times, extra allowance will cease. Hobbie to R.

J. W. Weaver. In 1833, 1834, 1835; mode of carrying mails from Bedford to Washington, from 1st September, 1832, to 31st December, 1835, it was carried tri-weekly, every other day, except about ten days: up to September, 1832, run a daily line.

I was concerned in the W. company, till January, 1833, on this route. In October, 1833, bought R. out on the route. At close of contract, the mail was carried on horseback, for eight or ten days; mail varied from 5 to 20 pounds at that time (35;) the mail was lighter after 1833; seldom weighed more than from 40 to 80 pounds.

When I purchased, I understood the pay was only $2,900, and knew nothing else while I belonged to the company.

Daily line was put on in 1831, on route from Bedford to Washington; but run mail only three times till January, 1832; thence to September, 1832, daily mail; and, so far as I know, without any extra allowances.

A daily line of coaches run to Mount Pleasant; then divided; one coach to Pittsburg, and one to Washington. In 1833, 1834, 1835, mail came to Wheeling only three times a week.

I was at Washington every ten days; at Mount Pleasant twice a quarter; and once a quarter at Bedford. Lewis superintended the coaches at Bedford; my partners were Lewis and others.

P. 8. R. Statement; route 1198; distance 108; credit annual compensation, 2,900.

Mr. Hobbie. Route 1031 is in part by G't, and part by Mount Pleasant; to meet the contract, there must be a daily line from Bedford to Mount Pleasant.

Routes are numbered by the advertisements from Post Office Department. Difference No. 6. Contract 25th February, 1833. Route 1089, commencing 1st March, 1833, to 31st December, 1835, from Philadelphia to Norristown, by Manyunk; compensation 1,500. R. claims 4,214 78; credit item, 1234; credit 2,714 78; 1127—3,341 78, leaves 373. Endorsed on contract; two daily mails to Manyunk, discontinued; and 373, discontinued: (this subject to objection.)

Mr. Hobbie. This discontinuance was ordered by Postmaster General. Additional daily mail to M. taken off.

29th November, 1834, Hobbie to R. Two daily mails from Philadelphia to M., dispensed with; compensation reduced 373.

125, 6. Difference No. 7; Route 1231; R. account, page 5, charges 5,600. Plaintiff credit 4,200.

15th October, 1831. Two contracts, one marked superseded, to carry the mail from H'n to Wh., three times a week, at $40—superseded by another contract with R.

The other contract from H'n to McConnell, daily, at $1,400—(subject to objection.)

Reduced from daily to three times a week; compensation deducted 700; one month ex. allowed from January 1st, 1834. May, 1834, all pay over $40 a year suspended till adjusted.

Mr. Hobbie. This deduction was ordered by Postmaster General on account of reduced service.

13th December, 1833. Letter from Hobbie to R. and Slaymaker, giving notice of deduction.

John Siders. From January, 1832, lived in Ch'b'g; spend a good deal of time and do a good deal of business at Hog. J. R. began daily line from H'n to McConnell; he sold contract to Slaymaker and Hinton, by G. C. and M. B., in summer of 1833. They called on me to carry the mail on horseback, by Welch Run. I commenced it November 23d, on horseback, tri-weekly, and till 1st August, 1834. Hinton wished me to discontinue it on account of expense, and said they would carry it by way of G. and C.

Soon after, Dr. Kennedy, postmaster at H'n, refused to give it to them in evening. Hinton then carried it on horseback for some time—4, 5, or 6 months—when some other arrangement was made by the Post Office Department in 1835; three times a week on horseback—Mondays, Wednesdays, and Fridays. Weight of mail, when carried on horseback, was from 20 to 40 pounds.

Dr. Kennedy. Am in Post Office Department; was postmaster H'n from 1829 to 1838; statement of Mr. Siders is correct. Mail carried sometime daily on horseback—in coaches at all hours, as suited contractors, after curtailment on horseback. As contractors did not run through Welch Run, it was supplied from M. B. Mail went three times a week on horseback, in morning, and three times in the evening in coaches. I refused to give them the mail in evening, because they did not wait for the Baltimore line.

I informed department; and they wrote me the contractors would be fined unless they were more punctual. Finally, the arrangement was made for coaches. I generally sent mail by Ch'b'g; nothing prevented me from sending by M. B.—but contractors disregarded schedule, hours, and instruction.

Daniel Shaffer. Was postmaster at M. B. in spring of 1834; mail was carried tri-weekly through place. W. Run was supplied by the postmaster of M. B.

P. 8.—R. statement. Route 1231, 31 miles; ordinary annual compensation $1,400; whole $1,400—compensation $700; present annual compensation $700.

No. 8 and 9, route 1215, 1230. R. account for No. 9, p. 6. Charges daily mail $8,257 96, $16,875—$25,132 96. Credit items No. 135, 11, 741, 91. No. 136, 613, 41. No. 137, 2434, 52.

15th March, 1832. Contract from April 1st, 1832, ending 31st December, 1835.

From Cum'l'd by Bedford to Blaces' Gap, 3 times a week, 4-horse post coaches, uniting routes 1215, 1230; annual compensation $4,500.

Endorsed 25th February, 1833. Mail to be daily from Bedford to B. G.; ex. compensation $2,911 72.

Above order rescinded from 1st December, 1833, $2,911 72, deducted 1 month ex. allowance; making difference in item No. 9, two years, $2,911,72—$5,823 44.

16th November, 1833. Hobbie to R., 1215 and 1230, order for four

additional trips a week rescinded, 1st December, 1833. No. 8 line ab'd to Bedford, same contract, No. 1215.

3d October, 1834. Service on 1215 reduced to a horse mail twice a week; 1230 once a week; deduction $3,995 per annum—1 month ex. allowance; this makes difference No. 8. Objection referred to items 8 and 9.

3d October, 1834. Hobbie to R. Service on 1215 reduced to one horse team, and 1230 to once.

John W. Weaver. In October, 1831, I bid for these contracts; we were underbid by one Clook. In spring, 1832, some of my friends came to me, and asked me to put a 2-horse coach on this route. I offered, through R., to carry this mail 3 times a week, 6 months in the year, in 2-horse post coaches, and balance once a week on horseback, at $1,500 a year.

In April, 1832, received a letter from defendant; this is letter read 16th April: The postmasters on route from B. G. to Cumberland, 3 times a week, in 4-horse post coaches; you are one of the contractors. I wrote to R. that was not according to my proposals; that I would not carry that contract, under that schedule, under $5,000 a year. He wrote me to go on, and put on coaches, according to my proposals, and if there was any difficulty with the department he would settle it. I got them before, in July, with coaches; run on horseback till then; run according to my proposals till April, 1833; then I gave the route up to Mr. Lewis. He, R., and I, was in partnership three months longer, till 1st July, according to my proposals—sold out to them then. I received $1,500 a year, no ex. compensation. R. never told me the contract price was $4,500, nor of the 294. I never heard of it till investigation of 1834.

Weight of mail, from Cumberland to Bedford, from 7 to 15 pounds, or 20; from Bedford to B. G., from 10 to 40 and over, or twice as high as 60.

Generally allow 40 pounds for a horse mail. When I had a load of passengers, I put on 4 horses; but only then.

P. 8. R. statement. 1215 and 1230; 68 miles. Ordinary annual compensation, $4,500; extra $2,911 72; whole amount $7,411 72; curtailed $2,911 72; present annual compensation, $4,500.

Difference No. 10; route 1388; credit item 38, 9, 38, $6,190, 39, $3,800—$10,790; balance $3,190.

15th October, 1831. Contract from 1st January, 1832, to 31st December, 1835, from Baltimore to Chambersburg, daily, in 4-horse post coaches, $1,900. Endorsed compensation, $1,595; for increased expedition, as found on the pay list, discontinued from 1st January, 1834.

14th December, 1833, Hobbie to R. Postmaster General order for increased expedition on 38, refunded from 1st January, on an improved bid. Objections referred to this item.

John Siders—Philadelphia post mail, and Baltimore line, stopped at my house. J. Fanslaye was postmaster in 1832. Mail from B. to C., in beginning 1832, left B. at 4 a. m., and in C. at 6 p. m.—in summer, 1832, left B. at 7, and reached C. at 10 o'clock; and sometimes as late as 2 o'clock a. m.

When superintended by Mr. Lewis, mail arrived regularly; when by Mr. Lindsay it was otherwise. That line did not run so as to connect with any particular line—the mail went on in the Philadelphia line, which left Philadelphia at 2 a m., and arrived at 12 p. m.

In last of summer of 1832, fast line left Philadelphia at 8 a. m., and arrived at C. next morning at 7. B. to C. 78 miles; P. to C. 150.

28th October: Nathaniel Green—as to debit item 368, credit items 181-2; debit 371—credit 80.

Differences 26 omitted in defendant's account.

Debit 384-5, credit 83, differences 28-9—omitted by defendant in his accouut. Debit 372, remained in Bates' hands—in Bates' account, $21,000 is included.

I was postmaster at Boston from 1829 to 1814. I received from Mr. Bates in 1834, two lots or batches of drafts by R. on dep't, and accepted by defendant; got them discounted at the Merchants' Bank in Boston; remitted the proceeds to Mr. Bates, $16,000 or $18,000. I guaranteed payment; think I endorsed them; there was much difficulty in procuring their discount; they thought the dep't good ultimately, but would not pay at the time they were discounted on my word of honor. Gouverneur endorsed them; his name or R. did not contribute to strengthen the paper.

Thomas Shriver: Live in Cumberland, Maryland. In 1834 and 1835, mail from Cumberland to Bedford was generally carried on horseback, except when there were passengers—in winter on horseback; in season of Bedford Springs, stages—sometimes 2, 3, 4, according to the number of passengers; season lasted two months; generally travelling was leaving Springs to get on national road; have often rode with the mail carriers; mail very small.

Passengers from Cumberland to Bedford, sent round by mail carrier to Bedford for a carriage.

William T. Lougherty: Lived in Bedford in 1834–5. Mail carried twice a week from Bedford to Cumberland and B. Gap; part on horseback, and part of time in stages.

In winter on horseback when snow was deep and water high.

Howard Kennedy. Increase of mail matter on national road was very great in latter part of 1832–'3; the pay was increased by the transfer of matter from the Pennsylvania road.

December, 1833 Report made by me of increased matter on national road for pending year.

From 1829 there was a constantly increasing quantity of matter on the roads from east to west; on national road in 1832, it was sudden and unusual. Mr. Plith was the general agent of the defendant on the Pennsylvania and national roads.

Difference No. 13. Contract for route 231, defendant's account, p. 3.

19th October, 1827, No. 231 contract ordinary compensation 10,900, from Philadelphia to New York, daily in stages.

To carry all guards when required by the Postmaster General, and pay their wages and board.

To run expresses when required. Allowance is contrary to the contract.

No allowance is on books of department from 1827 to 1831. Barry left the office in latter part of (April 30) 1835; allowance was entered on the journal of the department, as charged by R. Not carried into ledger.

14th May, 1835, suspended by Kendall, and rejected by Auditor, 11th February, 1839.

29th April, 1835. Transportation debtor to R. to guard, &c., half price per agreement; no date to the suspension.

22d July, 1830. Receipt by R. for furnishing double guards from December 22d to January 30th—405—45 days, on route from Philadelphia to New York; body of receipt in hand writing of O. B. Browne.

Difference No. 14 and 15, defendant's account, page 3.

15th October, 1831. No. 951 contract. Shall furnish mails with double armed guards at R's expense.

Credit item No. 70, 2,186, from 1st January to 31st December, 1832, for mail guards.

29th April, 1835. Journal entry for carrying, &c., 540, as per agreement; not carried to ledger.

Item 4,380 in defendant's account is not on journal or ledger, but on a slip of paper; this is all the memorandum we have of it. Read this item.

Daniel Brown. Offered to show that only one line had a guard on it—objected; because after an allowance, the United States cannot contest the item in this action. There never had been a settlement of defendant's account till 1839. The question now is, how the accounts ought to be settled. Here R charges an allowance; United States say it was by mistake. Not to W. Objection overruled. Defendant objects.

19th February, 1839. Letter, C. Fry to Mr. Washington, and his answer. Account settled and sent to R.

On the fast line which run at night, R. ordered me to have a guard every night; he said the sweeping clause which secured him the contract, was his finding a guard at his own expense; there was one on this line, but not on any other.

By double armed, I mean a pistol and blunderbuss.

No. 16, 17, defendant's account, page 3, credit item 147, 1,338 difference, 540 not on ledger, 3,474 not on journal on ledger.

15th November, 1832. Route 425, contract R. and J. Babcock & Co., of New Haven, to carry mail from New Haven to New York, daily, in 4-horse post coaches, and from New Haven to Hartford. To furnish an armed guard when required by department, without compensation, excepting his stage fare. R. had only one-third of this contract.

Whole compensation 15,000; R's part, 4,333; Babcock, 10,666.

The effect of this disallowance is to equalize shares of the contractors.

No. 18, defendant's account, page 4, item No. 1.

Allowance not on journal or ledger, but are on the paper J. R., No. 1.

43 section act of 1825, prohibits this allowance, as no additional service is required.

No. 14, defendant's accounts, page 4—allowance on paper, not on journal or ledger.

20th October, 1830. Contract No. 2,352, 2353. Contract Porter R., and allowance from Augusta, Ga., to Macon, daily; and from Macon to Fort Mitchell; compensation 6,930.

From Milledgeville to Augusta, 90 miles.

Washington, 10th November, 1832. Proposals to carry the mail from Augusta to Milledgeville, in 19 hours: and a tri-weekly mail to Powelton, subject to any change.

16th January, 1833. O. B. Browne to R. & Co. Postmaster General directs you to run direct from Augusta to Milledgeville. Calculation of this item according to section 43 of act 1825.

No. 21. Debit No. 288 and No. 22. *Vide* credit differences, page 14, 15; 5,000.

13th May, 1833. Requisition for draft of R. et al., to order 2,000; whole 19,000 check on Bank United States, New York, to R. Smith, charged to transportation. Mr. Lipscomb's draft was in my possession, (J. R.) dated 8th January, 1833; 2,000; and was compared by me with this entry in the cash book, 17th May, 1833; requisition for R., 3,000 checks for 25,000, including this, from No. 176 to 184. This draft was compared as before.

Peter G. Washington—Have searched for these drafts, but could not find them.

Wm. Suter.—I made these requisitions, and had the original drafts before me, drawn by R. on Postmaster General and the treasurer, dated 8th January; don't know amount, or whether conditional or unconditional. Difference No. 24, 25; deb. items 369, 70; credit items 85, 6—No. 26, 27, 28, 26, struck out; No. 50.

29th October: Richard Smith.—In 1833, was cashier B. Bank, U. S., at Washington. Two drafts—2,000 and 3,000—dated 8th January, 1833, were paid. No. 21, 22 paid 13-18th May, 1833. Credit of Sch. Bank—numerous drafts drawn same day, and paid by a check on New York Bank, for $19,000. Check No. 151—$3,000 paid 17th May—paid by numerous checks on different places.

Robston ——— No. 176 to 184, these are the checks.

Drafts by R. in favor of Schuylkill Bank on department— no evidence of acceptance.

Joseph Ottinger.—Live in Bedford; went there in December, of 1835. Tiper took mail 1st January, 1836; carried on horse back from B. G. to Cumberland.

Mr. Siders.—Weight of mail on fast line in 1832 to 1833, was 9 to 1,100 daily; on Sundays much heavier— from 19 to 20 cwt.; fell off after to 7 or 800. W. B. begun to increase very much in latter part of April, 1831. Canvas bags increased very much from 1827.

Difference 51-2, p. 13; credit 325, p. 14, 542—867, 26, leaves 248, 86 in dispute.

17th November, 1834. Contract for route No. 2366, R. and Avery, from Milledgeville to Athens, 3 times—2-horse stages; compensation $3,000 per annum.

23d March, 1837, deduction of $35. 12th December, 1837, P. M. reports that sub. contract had ceased service. February, 1838, new contract directed for part of route, at 1,700—R. to receive from 31st July, 1835—had half, before he had whole pay.

143. Credit item 630, 144; credit 2,275, defendant's account. Claim to 30th November, 1837—757 74—charge of fine is thus calculated.—paper J. R. No. 3.

No. 52, p. 13. Credit p. 14. No. 2,380, credit 1,000—1,961, 19,961 19 in dispute.

17th November, 1834. Route 2,380, compensation 1,500, R. and Avery, from Warrenton to Decatur, three times—two-horse stages.

12th December, 1837, same entry on No. 51.

28th February, 1839. New contract ordered at $3,500. Calculation of charge paper, J. M. R. No. 4.

Mr. Robston.—Drafts of 18th January, 1833. R. on department for 200, and 300 paid to Schuylkill Bank, drawn and endorsed by R. on C. K. Gardiner, Assistant Postmaster General.

James Page.—(difference No. 41, 46.) By register 24th February, 1835, E. mail from Philadelphia to New York, did not arrive in time to connect with south mail. There was services registered; but last referred to failure on 10th January.

Failures of 1st August entered on this register.

Contracts 954 stipulates for fine of $100, if connecting mail don't arrive.

Think contract sent to Washington before December, 1836, and lost on the way. I merely reported the fact of failure to department —when we knew the cause of failure we reported that; cannot recollect as to their causes; cause not stated on the book. Think mail not then carried on R. R.; not positive. Department instructed postmaster to keep a register of arrivals and departures of mails; commenced, I think, in 1834, in my office—confined to large mails at first, and after to all; causes learned from the drivers or passengers.

Dis't adv'st, we, when changes were made as to carrying mail by R. R., steamboats or coaches, No, 32, 33, 34, 43, in all $240, referred —probably remitted.

Mr. Weart.—In conversation with R., about two years ago, after a suit tried with Gouverneur, a newspaper stated that 3 drafts of 6,000, of R., had been deducted from G. account. R. came in, and some one remarked to him how that happened. He said it was all right—he had had the money, but defendant owed him a large amount, and they could deduct it from his account. This was in the bar-room in Congress Hall—a number of persons present; don't know who. I mentioned it soon after; not to the dep't till this trial. I live in Trenton. Offer record of suit in New York, United States *vs.* Gouverneur, to show the amount of the verdict rendered and judgment, and that the deduction from claim of United States was enough to cover the differences 53 to 60. Objected.

We cannot examise how the verdict was made up. If jury did not act on these items, their verdict is conclusive—on all matters claimed before the jury. (Mr. Cadwallader.—Here was such privity between parties as makes this record evidence *vs.* R.)

Here privity is wanting, as drafts were drawn for accommodation of department—not on contract.

G. was entitled to a credit, let who will be charged. If these drafts were matters of business, it might be proper to receive the evidence; but here G. proves they were not so.

Parol evidence may be given as to any other item, and judgment be open to inquiry.

Question is not whether jury allowed this claim, but whether it was submitted to them.

Mr. Coxe.—We deny privity. Neither G. or R. are chargeable with these drafts. Here the drafts are drawn on def't, not on N. Y. P. O.; drafts of R. on G., not department on P. O. N. Y. is not on the route, but at the end. Contract mean drafts on intermediate P. Offices.

The $25,000 in Gardiner's letter, don't refer to No. 53 to 60. 16. P. A. 161. Objection sustained. Plaintiff excepts.

Michael Snyder.—Was Postmaster, Manyunk, 1831, till fall of 1836. For 1835 the mail was a single one only once a day.

Mr. Hobbie.—In 1833, letter was addressed to P. M. General, relative to curtailments by R., whether by himself or in connexion with others acquiescing, can't say. Obj. I have searched for it and cannot find it, before coming here last week, and on Saturday at Wash'n in General Post Office, and Comptroller's Office—papers of committee in offices Clerk of House of Representatives, and of Senate; know of no other place where the letter can be. Dep't being called on say they have no copy of the letter. The letter was signed by R., and have no doubt it was his signature; it was at Washington while R. was there. Have not seen it since 1833; cannot say whose signature it was from recollection. That letter was made the subject of communication to Congress—as a matter of opinion, do not doubt it was his signature. I speak of it as a transaction. It accompanied President's Messagem at opening of session of 1833. It says, many of the principal contractors. (No copy in dep't by H. B.)

Question.—Do you know the contents of that letter, and what were they? Objected. Objections overruled. Def't excepts.

Contents were an acquiescence in the retrenchments then made. It had been the subject of conversation in dep't for some time, and the necessity of doing it—the contracts submitted to decision of department.

I can give only the substance and purport. This letter was before the retrenchments were ordered, and without reference to any particular circumstances, or cases.

I know of no agency in procuring these letters.

By the course of business in 1835, the ex. allowances were to pass through my office. In March 1833, Contract Office was divided. A part to me and to Gardiner: line was Potomac and Ohio.

In a division, it would come up to me for order of Postmaster General. I had no knowledge of the allowances of 29th April, 1835, at the time. My information came from Mr. Suter, the pay clerk.

Dr. Mason was chief clerk and treasurer, up to 1833. Gardiner had charge of pay branch, and O. B. B. of the contract branch.

After March 1833, O. B. B. had charge of pay branch till he resigned in 1834–'5. Mason came in for a short time, when Kendall

came in. Mr. Laughborough became chief clerk and treasurer of department.

Juror.—In 1833, engagements of department exceeded their means.

Applications for allowances are made to Postmaster General; he refers them to the contract department for the report of a case; but he acts on them.

Mr. Page.—The drafts discounted in Phil'a, for dep't, were mainly a cr. of def't which was fair, could have got the money without name of R., as my opinion. I never attempted a negotiation of drafts without a leity endorser were offered in any other case than I have stated. I said to the banks that the funds of the Post Office were to pay these drafts and were in anticipation of postages accruing at the office here.

Plaintiff reserves evidence in relation to $6,000 drafts which is on the way from Washington.

Bonds accompanying the contracts considered as in evidence.

Reserve also evidence as to the reports of postmasters in relation to failures.

Plaintiff closes.

30th October, Mr. R. S. Coxe opened the case for the United States.

1. Difference No. 51 not charged till October, 1839, after suit brought. It is an aggregate charge not specifying the different fines. So No. 52, we are credited for the service which cannot be withdrawn.

2. For extra service dispensed with. Difference No. 2, 4, 5, 9, 10. No such arrangement was ever made at Washington as is stated. Contracts on the subject of expediting the mail were made by a special agent of department and contractors. No discontinuance of the extra mail was ever made.

Letter assenting to curtailment was prospective, and was written by the solicitation of defendant, on an agreement made that in the meantime the contracts should go on.

3. Cases where service contracted for were retrenched properly we agreed it. But only where the route is wholly discontinued according to the terms of the contract.

Cannot be reduced from daily to three times a week. Discontinuance was understood to be to postpone the time of payment; and the service was to be performed, so that the effect was to go on upon the credit of the department, instead of its money.

Allowances of April 29th, 1833, was an execution of the agreement.

4. The money transactions of two kinds; 1. Business. 2. Accommodation.

Drafts for money due were accepted conditional.

For accommodation of defendant, acceptance was absolute.

For United States. John R. Nourse.—Was clerk of Patriotic Bank. 19th January, 1835, 3 drafts, $2,000 each, credit to Reeside. His drafts on Gouverneur, 1, 2, and 4 days sight, not discounted. Check (account) out by R.

4th February. This is account of R. with Patriotic Bank. J. R., No. 5.

Plaintiff calls on defendants for the checks.

25th January, 1834. R. to Gouverneur, objected as not reserved, offered in relation to the evidence of Mr. Page, given yesterday, admitted.

24th January. R. to Gouverneur, 5th February, accept as postmaster.

12th June, 1834. Also the letter annexed to the printed statement alleged.

25th June, 1834. To have been admitted by inadvertence. Letters read.

FOR DEFENDENT.

21st March, 1840. Offer an account presented to defendant, and endorsed. I acknowledge the presentation of this account; and protest against it for not being accompanied with vouchers; signed by the auditor.

Other accounts also offered; presented as above, and rejected by protest.

20th April, 1840. A third account presented as aforesaid, and protested.

10th August, 1840. A fourth account presented and protested against additional accounts.

15th August, 1840. A fifth account presented and protested.

15th September, 1841. A sixth supplementary account presented and protested. No vouchers; claims not adequately described.

15th August, 1840. Read note from Mr. St. Clair Clarke to Auditor, presenting the supplementary account of that date.

20th July, 1841. Whittlesey to R. as to additional claims; no objection if received before the 1st September—in reply, to request department to say what was the latest day when they would receive a bill of particulars.

22d August, 1828. Offer letter from R. J. Meigs, late Postmaster General, to R.

29th March, 1825. Letter from J. McLean, Postmaster General, to R.

28th December, 1827. Letter from J. McLean, Postmaster General, to R.

If your distance is increased by taking up a bridge, you shall be paid for the extra and service, and your efforts before the commencement of your contract. We have the thanks of the department.

15th May, 1826. To R. & Moore, from same. Allow increased compensation $500 for extra team, in compliance with my order, to commence 1st April.

20th December, 1827. Same to postmaster at Philadelphia. Have instructed R. to take immediate possession of the mail. Send this to R. by express, if he has not received my letter.

22d December, 1827. Same to same. Better pleased if you had required the best evidence.

I wish to employ R. if it can be done.

20th December, 1828. P. Bradley to R. Postmaster General instructs me to say, &c., you must be prepared for land transportation.

22d December, 1827. Same to same. Mail must go through from Philadelphia to New York at any expense. Spare neither men nor horses.

4th January, 1828. Postmaster General to R. Your expenses shall be covered in keeping up line, before you contract, and you shall be liberally rewarded.

June, 1828. Do. to do. You need have no fear about your drafts; department will sustain you.

12th February, 1829. Do. to do. Xtion advocate increases the mail—increases so much we must struggle against difficulties which seem unavoidable.

6th August, 1830. O. B. Browne, chief clerk.—Postmaster General being informed, you will transport mail from Philadelphia to Pottsville free of charge, &c.

9th February, 1830. Barry to R., approves conduct in arresting mail robbers.

27th June, 1832. O. B. B. to R. Mail boat leaves so as to enable you to arrive at New York at 8 a. m. You will be paid for extra stock if necessary; and department will do you ample justice.

27th March, 1832. O. B. B. to R. Wish you to detain mail to take letters to Philadelphia from packet. When such occasions occur, by adding more force, you can reach Philadelphia in time.

9th November, 1833. Barry to R. (confidential.) If by R. R. you have to go round, and have to increase your force, you will receive compensation.

22d September, 1832. O. B. B. to R. (confidential.) Want to see you on subjects on which I cannot write.

2d February, 1832. Do. to do. (private.) Ship letter business in New York shall be settled to your satisfaction.

23d March, 1833. S. R. Hobbie to R. You show exertions, and sacrifices are shown.

29th March, 1833. Hobbie to R. and Babcock. You promptitude is approved.

28th October, 1833. Barry to R. (private.) Come as soon as possible. Hobbie intends to treat you kindly. Be of good cheer; you shall be sustained. If department leaves you to fall, it don't deserve support itself.

7th May, 1833. R. Bates assistant postmaster. Look to the guards of the United States mail between New York and Philadelphia, to take charge of Brunswick mail.

15th March, 1834. Letter from Barry to R. offered. Objected and admitted.

Evidence to show the usage of the department of accepting drafts of R. on the department.

Read—confidential; 7th Ward Bank can do no more for us. Houston says he can raise $40,000 or $50,000 for department.

I enclose you $50,000, in drafts by you on department—endorse them; go to New York and have them discounted, and proceeds to our credit.

14th February, 1834. Do. to do. (Confidential.) I requested Taney that contractors should receive facilities from deposite banks.

15th February, 1834. O. B. B. to R. Importance of obtaining discounts of accepted drafts in your hands—they will be paid at maturity—issue all depends on the success, &c.

Obadiah B. Browne. In February, 1834, was chief clerk and treasurer of Post Office Department.

14th February, 1834. This is Mr. Barry's handwriting. R. acted in the capacity of contractor, and as agent of department, by his labor, his credit and services, to raise money for the department. Barry said that it would greatly facilitate raising money in banks, to have it understood that Mr. R. was personally interested. These letters were written to create this impression. I engaged personally and officially the confidence of Mr. Barry.

Barry believed that Mr. Kendall was trying to undermine him; and he thought his assistant, Mr. Gardiner, was in his interest, and he had no confidence in him—that Mr. Van Buren was in favor of Kendall; and Mr. Hobbie was a warm friend of Mr. Van Buren; and that some things had been said by Gardiner to Kendall.

I have the letter referred to in Barry's letter of 15th March, 1834. The 50,000 were put in this letter, and were not in the smallest degree connected with R. contracts; but were exclusively for the dep't, and sent to R. as their agent.

My instructions from Mr. Barry were to accept all drafts for services not completed—conditioned for performance of contract; if for use of the dep't, to accept absolutely, with one exception in April, 1834, he instructed me to accept one of R. drafts absolutely. I adhered tenaciously to the instructions—the excepted draft was in April, due in August. As to this instruction of Barry was in writing Hamilton's letter referred to in letter of 15th March, 1834, was put into my hands by Barry, to vindicate his character. Barry said it was better I should not know some things. In 1834, dep't had to anticipate all its means but some hundred thousand dollars—it owed banks 350,000—and pay of contractors remained due considerable time after they ought to have been paid. Means resorted to were to borrow all the money they could. R. was an agent, and a very useful one—so Gouverneur & Bates in New York, and Greene in Boston, partially. There was an account of money borrowed from banks—not of what was raised on drafts of R. I am doubtful if there were any means in department of settling these accounts unless by a person having a personal knowledge of the transactions—know of no such means.

Money raised on our drafts was generally deposited to cr. of dep't in bank, and applied to payment of debts. When I received a certificate of deposite, a clerk entered it in a book—they ought to have been credited to deposited—money was received 3 or 4 days after the drafts of 50,000 drafts were sent. Gouverneur stated in his letter that R. had sent 40,000 of drafts into hands of Mr. Hamilton. Recollect of no requisition to pay Mr. Hamilton; if I had it was by Mr. Barry's recollection—know nothing of the remaining 10,000.

Presume I made this memorandum at the time; presume these are the drafts making up the 40,000—8 drafts each of 5,000. No recollection of the 4 drafts of 2,500 each ever appearing again.

13th May, 1834. Requisition of check for 10,000, to J. R., for his pay for carrying mail.

The pencil marks are in my handwriting. Ham. is an abbreviation of Hamilton. My opinion is, that Barry instructed me to make this requisition of 5,000 for Hamilton.

This requisition is no evidence of the drafts being for use of Reeside. Borrowed more from banks than individuals.

10th April, 1834. This is my handwriting—then my belief was that to my knowledge dep't had not borrowed money from individuals except Hamilton. Page once borrowed $6,000 for dep't from G. W. Bates. Mr. Greene on one occasion borrowed money on R. drafts, and sent it on to Mr. Bates. I kept a memorandum of drafts I accepted, but not a bill book—it was for my own purpose. It was intended to note all drafts accepted by me. Generally the drafts noted in this memorandum are not drawn for use of department, except those of 9th April. Those for defendant are not there.

I kept this for my own use as treasurer to know when bills became due. Think I had some private memorandums of drafts accepted for public use. The marks in this memorandum, "paid," are in my handwriting. My impression is, there were over due drafts in hands of R.

When a draft was paid, the amount was charged to the drawer. The person depositing, in whose name it was certified, had cr. for deposit.

Drafts of 9th April purported to be for R., but was for use of dep't. I kept this for my own private use, and not as a public book. I had no instruction to keep this book. I handed it over to my successor—to inform him of what drafts would be due, and when.

15th February, 1834. This letter is in my handwriting—the mutilated one offered in connexion with the one enclosed, which was read and read.

O. B. Browne.—Beginning of 1835, I left dep't—books and papers there could be easily found; books were regularly kept and showed the account of debts due by the department. Ledger was kept by four clerks, Danent, Boone, Coolidge, Wheeler.

All accounts of postmasters and contractors were entered on the books of the treasurer's office—day books, journals, ledgers, bank (route) book, cash book, registers of accounts, books of postmasters' accounts, and settlements. Balance sheets were made at no regular period; each account was designed to be balanced quarterly, but they were not regularly made out. Accounts in ledger were pretty well kept up. I had charge generally of these matters.

In 1834, the accounts could have been readily made up from the books; but there were many not adjusted, which made it difficult to know the state of the defendants.

Ledger is index to making up an account with a contractor, and go back to the entry in the journal—post entrys were made in the journal of credits allowed there for services rendered before. Day book did not contain anything. I kept not books. Items kept under advisement are entered as at the time of decision.

13th September, 1841. Deposition Pishey Thompson.

Extract from a report of the president of the Patriotic Bank, of drafts discounted for R.

21st July, 1841. Deposition of R. M. Johnson to $6,000 claimed by R., not objected to, because this item was not presented and disallowed by the Auditor of Post Office.

Part relating to the declarations of Mr. Barry, marked with XX, objected to; admitted and excepted.

1st November. R. C. Mason. Was Treasurer of the Post Office Department from the 15th February, 1835, till 30th April, 1835. My duties were the charge of the financial concerns of the department. It was very much in debt, and its affairs very much deranged. I was solicitous to ascertain the debts due to and from, but found it impossible to ascertain it, or to see any correct statement of its affairs. General impression of department was, that the debt was easier than it had been, though I could not see that it was so. Taking reports of Treasurer and Postmaster General, and comparing them, there were inaccuracies. A large proportion of payments to contractors, was by acceptances. Two classes of drafts; 1st. Debts due and no means of payment. Contractor drew at 30, 60 and 90 days, sometimes longer, as we could agree; the acceptance was unconditional. 2d. Drafts on contracts to fall due at the expiration of the quarter, and awarded to them, fall due, they were accepted on the condition of the faithful performance of the service required.

I set my face against the second class and refused acceptance of the first one so drawn. After an argument of Mr. Brown, and as I had to ask favors, so I ought to grant them. Accepted that draft; the more I reflected on it, the more I objected to it, and applied to the Postmaster General who concurred with me that it was wrong; then agreed between us to act upon it as a general rule not to accept them, unless by the direction of the Postmaster General. A few were so made and entered on the memorandum book, as by his direction. Referred to the pay clerk, to ascertain if many were due on 1st class; his accounts were a good deal behind hand, owing to his illness and attendance before committee of investigation. I depended on his representation. J. Suter was the pay clerk.

I knew of no other than these two kinds of drafts. Examined memorandum book once in Washington, and since in Baltimore, on a trial of United States *vs.* Williams.

18th April, 1835. These drafts of $5,000 each formed part of the 1st class accepted for R.; some were conditional, some unconditional, though they are all entered together in a bracket. They were all brought to me at the same time, for my own satisfaction. I entered by order of Postmaster General, which applied only to the conditional ones; 1 of $10,000, and the others of $5,000 each—$30,000. Conditional drafts presumed to be in anticipation; unconditional ones for money due.

Never had any understanding with Mr. Browne, about drafts for use of department. I received this book from Mr. Browne, without any restriction as to to its being a private book, but to show his habit in relation to acceptances.

Never heard anything said about its official character till Saturday.

Pay clerk had a book for his own regulation; he brought me a careful statement of what was due as entered in the book.

Had no time or opportunity to examine the account of R. or any other; did not look particularly at R's account in the ledger.

Suter said there was difficulty in making out contractors' pay. There was a want of official communication between the different branches of the department; and Mr. S. had to make out his accounts as well as he could. Presume this is a book of the pay clerk, if these are the pencil marks I allude to, referring to the book.

Mr. Coxe here referred to difference No. 13, 14, 15; this service was in part performed in pursuance of a requisition, and in part allowed in 1832, and specially ordered by Postmaster General, and entered on journal, and so remained till middle of May, then show the suspension and the resumption of account in 1839, and a distinct requisition of it by the Auditor.

As to No. 13, 14, 15, credit item 70, admits the charge up to January 1832.

22d July, 1832. Receipt of R. on their account.

27th, 1834. Barry to Grundy, chairman of committee of Senate—objected.

1. This letter was written by B. as a citizen or a witness, and is unconnected with any transaction.

2. The evidence is irrelevant—43d section forbids it. A public officer called on for information by a committee of Congress, in relation to the business of his department, especially the Postmaster General, on whom the United States have devolved their powers without restriction.

Cadwallader, 43 section. Additional allowance is assigned to his contract, which is a public document.

It says to carry all guards, pay their wages and board.

This excludes any charge for any mail guards. If power of Postmaster General is undefined, a statutory definition is to be adhered to.

Connect 43d section of 1825, and 17th section of 1836, what is the meaning—17, one its proportion.

This court admits of no limitation.

If this is a case within 43, is it not merely directory to Postmaster General, unless it comes within 17th section. Contracts refer to state of things and existing usage.

If service for which extra compensation is claimed can by fair construction be brought within the duties of officers, it cannot be allowed.

One question is, after the allowance made by officers having discretion, can the court correct it without 17th section.

Postmaster General construes the contract; is he to judge whether case comes within 43d section. Is it a case for the exercise of discretion; if so who can control it.

Mr. Meredith: One object is to explain an ambiguity on the face of the contract.

It does not say that the guard shall be carried free of charge.

We offer evidence of usage of department as a rule of construction, and this is an item in the mass of evidence conducing to prove that fact.

Mr. Coxe. This is a pecular provision applicable only to certain routes.

1795—principles of equity and the usages of Treasury Department, are rules for settling accounts; what then is usage, and especially is there any usage, or extraneous matter which makes ambiguity; if so, it is good to remove it.

Service refers to carrying mail; it is object of the contract carrying guard is no part of it.

The service now claimed has been allowed.

Question now is, whether any evidence can be received same as in case of Gratiot.

Mr. Read. Object is to throw open the whole subject to competition on the original proposal as advertised.

A contract same compensation whether guards are carried or not, and pay wages and board.

What are the proposals?

Objection overruled—letter read—plaintiff accepts.

1st January, 1831. Statement from the Post Office Department to committee of the Senate of R. account to 1st April, 1832, balance $2,097 21.

1829, 7th December to 20th January, 1830, for double guards as in receipt of July, 1832, of $435.

14th May, 1835, Loughborough to R., suspending certain allowances, as per list.

Gave a statement of items composing the $16,961 50.

Mr. Suter. I cannot recognize the handwriting of this paper (copy of R. account.) The original orders for the allowances of 29th April, 1835, were sent by Mr. Barry to me; don't recollect that I saw Mr. Barry covering them. They came on different pieces of paper. Described the service, the time of service and allowance. The usual course of the department would have been to send them to Mr. Hobbie. Some were addressed directly to me, directing me to give the credit.

They would be sent to him as the head of the contract office, and he would enter them on his books.

I gave these papers to Mr. Kendall, a few days after he came into office. One or two were entered on the journal; none on the ledger. Can assign no reason why they were not all entered. Have not seen them since the search; and inquiry has been made for them—no one stopped me from making the entries.

Reason of not entering them was, that in the regular course of business, I had something else to occupy my time. Have seen a memorandum in my handwriting, (the one shown at the trial,) which was made out from the letter of Mr. Loughborough.

Show witness the original account of R.; think it not the handwriting of any clerk of the office, or any person whom I know.

Joseph Dodd. Objected, admitted, and excepted by plaintiff.

Lived in Jersey City from 1829 to 1835 in the post office. Kept in opening and receiving mails, and in transporting mails across the Hudson to the post office in New York. R. carried mail from Philadelphia to New York, from April, 1828, to December, 1835; mail

guarded in and out the whole time by one guard—never suspended, or when duty was not performed.

From 1832 there were two daily mails—small one in the morning, and large one in the evening. It was divided in 1833, one called the South Jersey mail; the other the large mail; and a third with newspapers, pamphlets, &c., was called rubbish. I think there was a fourth mail to Trenton. In ———, the 3d mail went by Amboy, in steamboat; in summer by Jersey City—the rubbish was called slow line. Morning mail continued the whole time.

Jacob Shipman. In 1829, and to 1st July, 1835, was employed as a mail guard from Philadelphia to New York, every night, without any suspension—think 4 mails carried by R.

The 10 o'clock mail was called the pilot line, and carried by the Camden and Amboy line in the summer. 3 months in the year there were 4 guards—2 extra. In 1828, the mail was always guarded from 1st January.

I travelled with the great southern mail, double guard in 1833 and 1834, to relieve the regular guards in bad weather and roads.

The other mails had no guard, and only one at a time guarded our line.

No extra guard was put on in 1830.

Augustus W. Griswold. From 1832, the mail was guarded on all occasions till 1835. I was a guard except when laid up. There was a guard before 1832, for about a year before—never heard an instance of the mail going without a guard. R. paid my board and wages.

Common routes were ten miles, in bad roads 4 and 5. Large mail only was guarded.

As to express mail, in 1832, R. came to me, and wanted me to ride on express to New York, and I went in 6 hours and 30 minutes going to New York, and 7 hours in coming back, and took up horses on the road. Afterwards went to New York in 4 hours and twenty minutes, and delivered mail in post office, New York.

Think this express run 32 or 35 days—think in 1833, not over 36 days.

R. another road from Philadelphia to Trenton. Sub-contractors took it from Trenton.

To Trenton, from Philadelphia, distance is 30 miles; to Bk. 26; to N. 31.

Difference No. 2. There never was any discontinuance, and service was performed, but a route was discontinued, supposed to be this—mistake was afterwards discovered and corrected.

19th January, 1835. Offer of R. for a contract sent to committee by Barry in an enclosed letter.

30th December, 1831. Letter R. to Barry, offer to carry extra mail from Philadelphia to New York, at half amount from Washington to Philadelphia via Lancaster. Marked accepted.

P. 97. Report 103 from Report of Post Office—$20,150 allowed for whole service.

19th November, 1833. Extra mail to York discontinued, and pay of $3,150 per annum, to cease from 1st November, 1833.

House document 103, p. 348. Statement of Mr. Hobbie, from which

Mr. Coxe made a statement to show the amount of extra mail in proposals of 30th December, 1831, which would amount to $8,971 87.

Mr. Cadwallader objects to any evidence on this claim, because it has not been presented to accounting officers and disallowed.

In his account, p. 6, he claims at rate of $3,150 for four years, to $12,600.

Credit item 110, 111, is for $5,512 50.

15th September, 1841. Account then rejected and returned to defendant; presented in August—was then handed to Mr. Cadwallader. Rejected because no vouchers are produced, and claim not properly explained.

1836. Sec. 15. Accounts must be presented and disallowed, &c.

3d November, 1834. Letter of R. states the contract to be for 3,150.

9. Cr. 236–7. Defendant was bound to offer to the deponent all the proof on which he relies here.

Must submit his title—all his accounts and vouchers.

8 Pet. 384. Vouchers are exhibited—decision of treasury on the vouchers.

10 Pet. 132–3. Claims for credits disallowed—reasons for rejection. Attorney not [prepared—satisfied—surprised.]

There must be a perfectment of vouchers and disallowance, which means action on the vouchers.

If the officers refuse unreasonably to consider the account, they cannot be revised here.

Defendant has not now any voucher which he could not have produced at the treasury.

2d November: Mr. Coxe for defendant. This evidence answers the evidence on the other side as to No. 2; and also serves to establish a further credit for additional time and increased pay. So far as it relates to difference No. 2 the evidence is clearly admissible.

In 1839 R. made out his account, when away, and presented it with a separation.

Such an objection is never made in Washington, when the practice is to send down an account during a trial to the treasury, in order to have it rejected so as to be revived in court.

Law does not require the presentation of vouchers, where claim rests on vouchers.

Not offering vouchers is a reason for disallowance, but not for not acting on the account.

Here the claim refers to a voucher in the department, and the date of the paper.

8 Pet. 324. Refusal to allow is a disallowance.

Witnesses need not be produced before the officers of the treasury.

Suing for balance on an account settled 22d September, 1841, is *per se* a disallowance.

Gilp. 381, because the first necessarily excludes these items. We could not make the change more specific without explanation from defendant.

Mr. Meredith.—Post office suits brought under act of 1797, to 1836, now so entirely new.

In other suits court must give judgment at first term. In post office

suits they must only go on to a trial. Vouchers not required even in the case excepted—which is want of evidence; then court may receive the claim as cause of continuance by act of 1825.

Want of vouchers is the usual ground for disallowance. Or, by act of 1836, if vouchers and accident—they not be presented.

Here is certainly in service, time, and price.

Mr. Read, in reply.—If this is evidence then the law is not regarded.

Defendant would prefer an allowance without expense to making it out, by evidence the expense of a trial.

3d Story 1630, 2 sections—all claims shall be adjusted in the Treasury Department.

8 Pet. 385. Had his vouchers been rejected.

Accounts must be settled on principles of equity and usage of the Treasury Department, and laws are to be construed equitably and liberally.

Court divided. Evidence admitted. Plaintiff excepts.

Plaintiff was here called upon for evidence of what was paid Stockton & Stokes for the ex. mail from Washington to Philadelphia, *via* Lancaster.

30th June, 1832. I allowed of post office—S. Slaymaker for ex. mail from 1st December, 1831, to 1st April, 1832, York to Philadelphia, 3150.

14th August, 1840. Letter, Mr. St. Clair Clarke to C. K. Gardiner, Auditor of Post Office Department—objected.

It states facts not proved, or capable of proof by this letter; admitted not as any evidence of any fact therein stated, but as a mere statement of the defendant—and as notice plaintiff excepts to those parts which are unnecessary for these purposes.

9th November, 1833. Confidential. Barry to R., read before.

Samuel R. Slaymaker.—I carried ex. mail between Lancaster and Philadelphia for 4 years—1831, December, to last December, 1835; connected with an express mail to Washington—4 winters. I received $3,150 for 2 winters' service, when no steamboat run; never received written notice of discontinuance, continued the service for two months more, but was not paid for it.

Was concerned in route 1031, from Philadelphia to Pittsburg. I had one half from Philadelphia to Chambersburg; R. from Chambersburg to Pittsburg, allowance was made for newspapers 10,000.

R. drew pay for west half, and I for east half. We settled at crossings of Juniata—all parties interested were there; Mr. Weaver among others. The item of extra allowance of 10,000 was accounted for. I was examined before Post Office committee at Chambersburg and Washington—twice at Washington; settlement was between my first and second examination. We settled quarterly generally.

Effect of curtailments on route from Chambersburg to Baltimore, by change of hours, was ruinous—the schedules were changed three or four times. We lost our whole stock, and money besides. I paid Mr. Lindsay 600 for my proportion. Those made in fall of 1832, were by letters addressed to each contractor. I was there immediately after they were made. I was at Washington, and informed they were made. I was requested to address a letter to the department, acquiescing in

curtailments then made—was told Barry had made them, though he was very much opposed to it; and these letters would make a better feeling.

I complained of them. Mr. Brown said the curtailments would be withdrawn; and the contractors would be paid in full when the department was in a situation to do so.

Cannot say whether the letter was before or after this assurance—think it was on the same day. R. was not then in Washington—don't know whether he agreed.

The services on the Pittsburg route were performed after curtailment in consesequence of these assurances from the department, and it was within the knowledge of department that services continued. One fine was charged to us on the route curtailed, for not delivering newspapers on the extra mails from Phiadelphia to Baltimore, for which we were not paid.

4, 5, or 6 months after curtailments that they were withdrawn from the time of curtailment, that he had been so informed by Barry, and was requested to say so to the contractor.

Juror. And to be paid in full back to that time?

The extra allowance was on a contract made in 1831, to commence 1st of January 1832. Two mails are carried. Letter matter and six passengers, and no newspapers. At first they were carried in the slow line; the 10,000 was allowed for carrying the newspapers in the fast line—which took place very soon after the service began. This threw great additional weight on fast line—excluded passengers on Sundays on account weight of mails—on other days carried 6 passengers.

12th July 1832, letter from Barry to R. & Slaymaker. Our contract was only to carry the letter matter in the fast mail, &c. Propose 10,000 extra. Endorsed granted.

I recollect the facts stated in this letter. Charge for pasengers was 18 to 20.

Continued this service till contract expired.

In fall 1834, the weight of mail diminished—but never lower or as low as they were before 1834.

I had an interest in the route from Chambersburg to Pittsburg, and lost stock there. It was sold to pay our debts, and the company yet owes $8,000. We made money before the curtailment; winter is worst season for stock.

On the extra route through Lancaster, one Dewbee was our agent. I was informed of curtailment at Washington. Don't know whether Dewbee had written notice. Lancaster was the dividing point of our contract. Stockton received 3,150, same as me—whole was 6,300.

I did account for this 10,000 as it was received, and was in a general settlement of what I received. There were separate specific charges against it for services rendered and losses sustained—for 2 or 3 years I rendered no account.

To best of my knowledge the increased speed continued. I left that road in the last year. For three years was on the road a great deal. Think we were not more than 24 hours from Philadelphia to Chambersburg. Fine at Co. was enforced.

19th November, 1833. This letter I believe was addressed to R. & Slaymaker at Philadelphia. I was at Lancaster, cannot say whether I saw it or not. R. sometimes communicated such letters to me, sometimes not.

Don't know weight of mail 1st January and 1st July 1832. Moved to York January 1835.

We never made any profit on Chambersburg and Baltimore route, except for three months. We lost money last year on Pittsburg route, whole stock and more on Chambersburg and Baltimore. My stock was 1,800, and 600 paid.

Stock between Philadelphia and Bedford was $88,000, by inventory taken two years before the expiration of the contract. Stock not sold till after. I held no stock beyond Bedford. Division of pay was made at time of the contract. I have received my part up to the time of curtailment. I assigned my claim on department to R. for the balance claimed since the curtailment.

Mr. Shipman. In 35 days of extra from Philadelphia to New York, 1 horse killed and 12 turned off not fit for use, and as they were bunged up, turned them out to pasture; had 24 at one time bunged up. We were taking horses to and from the farm at Princeton, and at Brunswick, and at Newark. R. had on road from Philadelphia to Trenton 24 extra horses.

Mr. O. B. Browne. An extra mail daily from B. via L., to Philadelphia, and on to New York, was established under order from Postmaster General, to run when steamboat navigation ceased. Stockton & Stokes, and H. took it to Philadelphia, and R. to New York. It answered a good purpose.

When the curtailments of November, 1833, were made, it was to bring the expenses within the revenue. Hobbie and Gardiner had charge of the subject. Made out a statement of the curtailments. About time R. & R. were at Washington, Slaymaker came to me and complained, and said these curtailments would break him down. I suggested to Slaymaker to give Barry all comfort he could, as Barry was very much blamed for it, &c.

Slaymaker is correct in what he says about the restoration of curtailments.

Mr. Barry instructed me to say to the contractors—should be paid their regular pay, and curtailments be restored, if they would go on and perform the service. Know of no letter from R. to Postmaster General on it. Such an one would not come to me in the regular course of business.

3d November. Charles J. Ingersoll, esq. I called on the department as the attorney for the defendant, repeatedly, at long intervals, during a year or two; and after, during my occasional residences at Washington, I urged on Gardiner, the Auditor, on Kendall, the Postmaster General, and Mr. Van Buren what I stated as the injustice in the delay in settling defendant's account, and it was the subject of correspondence between the three and me. Finally, in 1839, (two years or 18 months before February, 1839) in Auditor's office, as per memorandum, an informal conversation, 4th February, between Auditor and me, Mr. Washington generally present, went over account with

a view to its settlement; I pressing such an one as would bring it into a court of justice, not as a final adjustment, and (speaking from memorandum) in my room at Brown's hotel, I made this memorandum of allowance and disallowance: $8,760 [not mine] not allowed; $540 do.; $541 [not mine] allowed; $4,380 [do.] do.; Nos. 13 to 15, $3,474 not $5,937 [not mine] ev. allowed, $700 allowed; $1,380 do.; my wopes, $5,989 59 half allowed, [in advance]—say $3,000, $1,080, $1,380 $700, $5,900, $4,380, $540—16, $980; "about that sum allowed." Informal conversation 4th February, 1839.

Cannot designate items, think they were the disputed ones. I did not go on with the account item by item.

1st February, 1839. This account presented by me was made out by P. Thompson, from materials furnished by R. Had dealing with P. Thompson several times, and was at the bank to see him. A few days after this, Mr. Gardiner and I, I think, formally settled this account, dated 11th February, headed decisions, and so forth. We were in the room of Mr. Washington, who was present.

Gardiner called over item by item, and said allowed or disallowed, in order to so adjust it as to be cognizable in court. I asked him if an appeal to first comptroller was necessary. Gardiner and Washington said no, and spoke to Mr. Baker about it, who did not want the appeal.

Foot of P. T. account was $149,000; he was an excellent accountant—admitted. Cash items are handwriting of P. T., and aggregate; the schedule of contract.

Allowance claimed are not his.

Memorandum at foot is my handwriting.

Paper of 11 February was the result of the informal conversation.

Juror. Don't know the meaning of the crosses.

Abraham Schenck. In 1833 lived in Philadelphia. Some officer in post office applied to me to run an extra line to New York, with wagons each way, every day. In February I made a calculation that it would cost $28,000; this price was refused by the officer; he then turned to R. and said, you must run it on horseback with 20 horses each way; this was between 1830 and 1833.

I believe he run the mail; saw him every day at post office, receiving mails. I then had part of the route from here to B. on this end of the line. R. and I were in opposition. I tried to prevent him. I was concerned in another extra line between this and New York. By taking mail at Havre De Grace, I took my extra packet. Kept the general mail back till 3 o'clock, though in good weather we could deliver it at 9; this kept R. back, and our line got to New York first. This did not continue long—expenses were great—one express we got $900, and did not make much by it. Think Mr. Bates was the officer who applied to me—he told R. to go on and they would pay him. No price was fixed.

Question. While R. and I run in opposition, what was a reasonable compensation for an extra mail from Philadelphia to New York? Objected because there is no controversy between parties on this item—admitted.

Answer. Don't know. Common price is one dollar a mile for line of a horse; for our horses, four dollars for five miles—rider extra.

Made an estimate for committee, which I think is correct. As I refer to it, it is correct.

Sen. R. Doc. 86, 23d Cong., 2d Session, p. 304. R. had the heaviest mail. I carried only a package which could be carried around the body of the rider. R. had heavy bags at each end. I run four weeks about. Cannot tell what I received—generally $100 a day.

I only run fourteen or fifteen horses.

Have read whole of my evidence in report, and think it is correct.

I received money from Hall & Halleck, but can specify no sum. I think several hundred dollars. I run part of time to Trenton, and part only fifteen miles. I contracted with H. & H., and gave it out to the men who done the business.

28th January, 1833, O. B. B. Post Office Department to R. Ex. papers from South for New York editors and letters must be sent from Philadelphia to New York in six hours, &c., and to be continued daily till steamboats run—run two horses if necessary, or more, &c.

17th February, 1833. O. B. B. to R. Start letters and ex. papers for editors, &c., &c.

Samuel Gouverneur. Ex. mail of government arose thus: Hall & Halleck had an ex. mail. Barry wrote to me to know if they violated the post office law. I said not. He wrote that he must establish an extra mail, and if it cost $100,000 he would beat them—that he had given full powers and authority to R., and he would do it.

The mail of R. was for the whole city, that of Hall & Halleck only for their paper.

Taunting publications were made as to slowness of United States mail, and much excitement existed.

Caricatures about black poney and terrapins were published every day, and continued till after ex. was driven off. R. beat them. Treble postage was charged by this mail, and paid in advance. My letter to Barry was the day I received his. I wrote that something must be done—think I cannot be mistaken in saying there was treble postage, and payable in advance, but it may not have been this ex. mails.

Mr. Bates knows more about it than me; it was not exactly in my department—often saw the mails come in; they were bulky.

Mand case 28. Offers Rep. of Moxie, the solicitor, knows as matter of history, &c.—offered as an —— of defendant on this item—admitted as such a mere statement of counsel, whether reference is made to Mr. Moxie's report or not—admitted. Plaintiff excepts.

Barnabas Bates. From June 1832, to April 1833, was special agent for Post Office Department—from April, 1833, till August, 1836, was assistant postmaster in New York; resigned 31st August, 1836. Spring and winter of 1823, was back and forward at Washington; there was much complaint of transportation of mail from Washington to New York, and along the whole course to Portland. Postmaster General, and those connected with him in department, were much annoyed, and exceedingly anxious to remove their cause. Delays were principally between this and Havre de Grace. Travelling was bad; and mail bags and newspapers were often left on the road—

the matter was too great to be transported. I had passed several times on that route with the mail wagons. S. & S. run their horses ten miles—it was necessary to have a shorter route in the spring of 1833. Mr. Greene, postmaster at Boston, came on and proposed to shorten the time twenty-four hours between Washington and Portland; and that he and I should call the contractors together to advise the means. We went to Baltimore; saw St., and St. told them the wishes of Postmaster General; they said they would do whatever man and horse could do to meet the wishes of the department—they were contractors from Washington to Philadelphia. St. proposed to increase expedition on that route, on teams, to which we agreed—subject to approbation of Postmaster General.

Came to Philadelphia, called on R. and stated wishes of P. M. General—said that he would do whatever man could do in the case; and in order to accomplish the object, he went with us to New York and New Haven, where we met Babcock and proprietors of New York steamboat line, to arrange for taking the mail on Sunday, for which they asked 10,000, and 2,000 for the other 6 days. We did not agree. R. arranged for Sunday. Went to Hartford—to Worcester, saw the contractors; thence to Boston on business—we wrote to the contractors between B. and Portland, to come on and meet us in Boston, as we were unable to proceed on account of an injury on the road. W. complied with wishes of department, and made an arrangement with those contractors, for whole route, among whom was R.; don't recollect the terms.

J. H. Everything was subject to the revision of Postmaster General, to whom we submitted it. It was approved and carried into effect according to arrangement we made. R. acceded to our proposition—know of no alteration in existing contracts by the arrangement—no existing service dispensed with, or allowances withdrawn on previous contracts.

Think not present on 25th April, at arrangement between Hobbie and R.; on 23d, had entered on duties of assistant postmaster at New York.

Nathaniel Greene.—Was engaged with Mr. Bates, by department, to travel from Washington to Baltimore, Philadelphia, New York, New Haven, Hartford, Worcester, Boston, &c., in March or April, 1833, and did so (as stated by Mr. Bates,) We ascertaine that the contractorsd could give what speed we wanted—wanted it on whole route; the money arrangements made with the department. Speed between Philadelphia and New York was one hour.

I was laid up at Boston 8 days—on 9th went to Washington to make my report—saw no one but my physician in the 8 days; made no arrangement with steamboat proprietors. I had a letter of appointment, from department, to go on this expedition, but have not seen it for many years—a joint one with Mr. Bates. Mr. Bates returned while I was confined; he was at Washington when I got there.. Think he had made a written report before my arrival, which I acquiesced in and signed—not present at arrangement between Hobbie and R., on 25th April 1833. Report called for by department. Plaintiff's counsel say not.

11th March 1833. P. O. D. from Barry to Green & Bates, special agents—authorized, &c., to make arrangements, &c. W. T. B. schedule signed by Mr. Hobbie, to run from Washington to Portland, in 3 days———h. 555. Returning same time schedule.

Fines.—We say that on the 1st April 1834, all fines we remitted in items of $600—140 admitted by United States not claimed.

Mr. Taylor, John.—Kept a book as to fines—as a memorandum, gave contractors notice when a fine was entered. I draw the notice, Hobbie signed them and I put them in the mail. The contractors sent or made their excuses. If not remitted, I notified the pay deponent once a quarter till 1833; after that reported more frequently.

Notice of fines not published in newspapers till Mr. Kendall came in. I made an abstract from the fine book.

Mr. Suter—There was a memorandum book kept by me, in which I made quarterly entries for R.—when he would come to office it was his book. I kept it from the books of the office, and in regard to drafts, the drafts themselves. Kept it for information of R. and my own convenience. This is the book. Before 1839, don't recollect of any final adjustment of our account with Mr. R.—there had been statements of his accounts. I came to office in 1818.

Never had any book kept by R. of his accounts with the department. The entries in red ink were made by me by directors of the Postmaster General or Treasurer of drafts—whether for defendant or connected with transportation, did not know—though charged to R. in the pay account. I generally drew the form of these red ink drafts—they were filled up for transportation, Postmaster General or treasurer accepted them.

H. B. All the entries in this book relating to defendant are in my handwriting.

15th May, 1834. 3 drafts of 5,000—15,000; 20th May, 1834, 3 drafts of 5,000—15,000; 25th May, 2 drafts 5,000 each—10,000; same date, 4 drafts 2,500 each—10,000=50,000. These are the first batch of the Hamilton or Gouverneur drafts sent on to New York to be negotiated.

H. B. signed I believe by R. before sent on. Not certain if signed by R. In a few days or a week after drafts were sent on R. and Gouverneur came to the office. The treasurer called on me to substitute 30 or 40,000 for these, as they did not answer the purpose, and did so. Drafts were handed to Mr. Brown, and know no more of them after that. Made no entry of these substituted drafts. Entry of R. sub. 50,000, was made from a memorandum in black ink above, and at the time the drafts were drawn in the form, and the next time R. brought the book to me to make the entries—made 50,000 entries from memorandum or memory, cannot say how.

There was no entry of them in the day book.

Juror. Entered no drafts in this book unless taken from a book or the drafts, or perhaps in this case, as the book was not by me, from a memorandum or memory.

My agency began by filling up the 50,000 drafts by direction of Mr. Brown, and ended when I did so and handed them to Mr. Brown,

and never saw any of them or the substituted drafts afterwards—and don't know what became of them.

Juror. When I filled up the substitute saw none of the first batch. Marginial entries in red ink shewed when they became due.

No object was stated to me in drawing these drafts, only that it was by order of P. M. General.

Form. On———day———pay to my order, and charge transportation of mail. By Gouverneur drafts, I mean those I have since heard were negotiated by him, or through his hands; so of Hamilton's drafts—understood about the time, or soon after, that Hamilton was to furnish the money through Mr. Gouverneur—other drafts in book in R. sub. were drawn by direction of P. M. General, through the treasurer—know no more about them. Immediately above them first May 5, 1834. They were drawn and accepted as others were—when paid, must have seen the name of drawer. Accepted some conditional, some not.

Juror. To whose account were they finally carried?

Ans. Such as were paid were charged to R.

25th Feb'y, 1834. Drafts on preceding page same as before. 4th November.

7th of March, 1833. Red ink entry, Cumberland to Bedford, &c., improperly cr. 1125, it had been given 1st April, 1832. Don't know when either entry was made. Made from a statement from contract office—had not gone on to the books of the office.

I had pay list pay books, transfers from pay book to journals were all supervised by me—am generally acquainted with books of dep't. Account of 1839 is not a transcript. Debits are pretty generally abstracts from ledger as an index to the journal and other books. We have had no ledger in office since 1836, except one for general accounts.

Transcript from ledger as far as it went. This is old ledger to July 1835. Balances struck quarterly—last entry is 10th November, 1835.

Letter C.; account 595. Arrears 2,123 60 last balance 404,93. Dr: on 1st July, 1835.

Cannot say when the ledger was posted up—there were three book keepers.

Mr. Denant, Cooledge, Wheeler and Boone, W.

These pencil marks were mine for my own convenience of accepted drafts—entries not made by me; made pencil marks because book was partially under my control—made them at time of acceptance; don't know if I ever saw the drafts after the acceptance. Think I saw the account settled in 1839; was concerned in making it out. When a draft came to office, it was referred to me before acceptance, to see if there was that much due, it went to the treasurer in all cases, and marked on it with a pencil, noted.

In 1834, 1835, think there was an account made out between defendant and contractors, R. among them. Quaterly balances due to and from contractors.

House report 173, p. 576, believe I made it out from books, and they correspond to 1st October, 1834. The other were other estimates.

P. 577. Statement of additional credits to contractors—this is

original; think it is handwriting of Mr. Denant, (read heading of both) made up by calculation—from journal and ledger by estimate, and credits were not actually entered till afterwards, and made them as I thought they ought to be entered.

No. 3 statements of actual balances due to and from R. Cr. R. to full amount—charged to him to 1st October, 1834, from April 1829.

1st April, 1829. Ledger balance as p. $5,000.

This paper was made out by Mr. White, a clerk in the department.

1st April, 1832. Balance $2,097 21. Senate document, 1835, No. 86, p. 310 to 333.

Account of defendant for same period as the above, contain items of $3,000—$2,350 not in the other, yet balance is the same.

1st October, 1834. Account of S. Slaymaker in handwriting of a clerk in the office.

Note, &c., balances *vs.* Slaymaker, 1st July, 1833.

Dr. $8,940—entitled to cr. of $12,637, instead of $3,237, credited on books. 1st October, dr. $6,940, cr. $10,737, instead $3,237. 1st January, dr. $8,830, cr. $11,987, instead $3,237. 1st April, dr. $1,080, cr. $11,987, instead of, &c. 1st July, $10,218, cr. $11,987, do., do.

Offer in connexion the three printed statements.

Mr. Suter. Account in p. 576. Balance as struck 1st April, 1829, is $6,619 94; on that R. was credited up to March 31st, $5,544 16, leaving balance $1,075 78. p. 577 read, entitled to additional credit for $2,125, cr. R. $1,049—$578; "checks charged to R. for which he is not accountable." This is in connexion with these accepted drafts of which I testified yesterday. R. book is from 1832 to 1834.

Had no participation in making out R. account in 1839, except a tabular statement in front, a copy of which I left with Mr. Ingersoll and Mr. Clark—no conversation with P. Thompson on this subject. R. book was a pass book kept in his possession—not shewn of the officers of department.

On p. 1, entered in R. handwriting, draft of $3,000 accepted by O. B. B. in February, 1834, disposed of to W. Bradley; know of no draft to which this refers, other than the one of which it fits the description in p. 59, in r. ink.

R. ink memorandum refers to the same which are carried out in b. ink.

The $50,000 batch in r. ink contain the eight drafts enclosed in a letter from Mr. Hamilton to Mr. Brown; they are in my hand-writing.

Cr. item 84-5, &c., are entered on ledger, and refer to these drafts.

Check $2,211 was made under a resumption for this draft, do. $1,863 4.

Cr. No. 87 to 90—$5,000, referred to debit 378. Preg'n and checks correspond. Recollect no dr. to R. for the $50,000, other than those cr. to amount of $25,000.

This is bank account book referred to by Mr. Brown. First column is No. of the certificate of deposite. This account was kept by Mr. Fostel.

Payments by checks are charged to the person to whom it is payable. This ib. check book. Entry 1,959.

This is pay book—this is pay list—by which we regulate the pay of the contractors; the black ink is contract—red ink is extra allowance—pencil marks are discontinuances—entries are carried from this book to journal. I kept this book.

Senate document, No. 86, p. 118 to 1837, contains the continuation of account shown me by Mr. Clark; think debits stood on ledger as here stated at the time it was made. There is no charge to R. which was not entered on books at proper time; and none which cannot be traced back to books and vouchers—and many vouchers were burned, and many saved.

Mr. H'n. collected all he could find, and I believed he got all which could be found, in order to prepare for this trial.

In R. book, p. 61, there is a line, May 5th, four drafts for $1,000 not paid; believe this entry was made by me. I did not erase (cross) it. Don't know handwriting of Hamilton and S. L. Gouverneur, p. 55. S. L. Gouverneur, p. 51—61; one 20th February; others from 5th to 20th May are different batches. Cash charges were explained to R. when required—not aware that this book was known to dep't till yesterday.

Pay book route No. 5—60 and 61. R. & Moore entry 244 17. Moore written on an erasure—don't know when; made in presence of R. I think; not made in last two or three months, or last six or seven years —— by me, I believe, to regulate the division between the parties to the contract—don't know the original figures—Senate document p. 111, ——th dollars. Vouchers of each individual contractor were put together to make up each quarterly account—it required from eighteen months to two years before the accounts were sent to treasury. R. account went as others to the treasury with the vouchers—don't know when his accounts were sent up; his quarterly accounts were sent up, showing the operation of the department—vouchers I spoke of are receipts of contractors. Auditor or contractor did not keep their office in the Post Office Department.

Vouchers were sent to office of register, which was burnt in 1833.

There was a fire proof building which was not on fire.

Speak of the two batches only from entry on the book.

Drafts on page 61 are entered as of the day when they fell due—they are distinct drafts.

59—only connexion between these and page 61, except their being done on same day.

I have no recollection, except from memorandum—and their being entered in short.

21st October, 1833. B. Bates, agent to O. B. Browne, negotiation with Monttott Bank.

2d February, 1834. Page to Brown, do. Moyamensing.

12th February, 1834. Bates to Brown, private, 13 do. do.; received 5 transfer checks for $40,000.

36 discounted, premium not agreed on, but to be the same as by other banks.

14 do. do. do., enclosing a letter of same date from Gouverneur, no arrangement for $50,000.

Enclosed—private, Gouverneur to Brown.

15th February, 1834. Brown to R., read before.

18th February, 1834. Bates to R., as to $19,000.

25th February, 1834. Gouverneur to Brown, (private) 7th Ward Bank authorize you to draw for $25,000.

In what shape shall the evidence of the department be made?

25th February, 1834. Bates to Brown, 7th Ward Bank to loan $25,000. Can't negotiate R. drafts.

3d March, 1834. R. to Brown, Bates will send on part of drafts to Boston. I paid no $4,000 draft in Philadelphia.

3d March. O'Conner, cashier 7th Ward Bank, to Postmaster General; $25,000 to your credit, and $36,000 before, and over checked $7,318 besides.

4th March, 1834. White, cashier Bank Manhattan, to Brown, declines increasing loan.

25th February, 1834. O'Connor to Barry, the $25,000.

7th April, 1834. Bates to Brown—sold draft at 7 per cent., and ¼ commission on Prime, Ward & King.

13th May, 1834. Brown to Bates, (private) ch. at request of R. for loan, $10,000—$4,432 balance in hands of one of you; $5,600 is in Boston, (vide page 86–7.)

13th May, 1834. Barry to Gouverneur, confidential, 2 check, &c., protest $4,432, &c.

15th March, 1834. Barry to R.—read before, refers to.

13th March, 1834. S. N. Hamilton to Barry, confidential.

Swartout and I have agreed for to obtain 40 or 50,000 dollars for department—best draw in favor of R.

15th May, 1834. Bates to Barry, do. do. do.—to Brown.
do. do. do. to Gouverneur.

15th May, 1834. Receipt—Hamilton to Bates for two checks, $4,432 44, and $5,567 56, &c.

26th May, 1834. Receipt—Hamilton to Bates, 4 checks for $5,000, &c.

26th May, 1834. Bates to Brown; have them endorsed by R.

5th June, 1834. Bates to Brown; no new drafts on Manhattan Bank.

19th July, 1834. Receipt from B. Bates, G. L. Schuyler, for I. N. Hamilton, for paid checks—also draft 19th July, 1834; draft of R.

19th October, 1834. Hamilton to R.—I received 8 drafts for $5,000 each, &c.

22d March, 1834. Hamilton to R.

5th November.

24th May, 1834. Brown to Bates—Closely run; coax bank to draw for $10,000.

19th June, 1834. R. to Brown—Can't get check for $3,000 done.

29th March, 1836. Bates to R.—Johnson's account about $15,000; paid to Hamilton.

O. B. Browne. The $50,000 batch, know nothing of these drafts being withdrawn; they were accepted by Postmaster General; did not tell Mr. Suter they were withdrawn. As to mode of payment to contractors by drafts on postmasters. Never customary to draw on the large offices in New York. Large offices they were depositing

offices, and deposited in bank, and drafts on them were on account of postage received or anticipated. Contractors' drafts were on offices which did not deposit in banks; the object was the aiding the collection of balances due department, and for its convenience.

Juror. When the drafts of contractors, a memorandum was made, and charged when paid to the drawer.

Juror. Accounts were never balanced as I know of. H. B. never saw a balance sheet up to 1835. These arrangements for raising money were confidential; is not generally known in the office, only to those interested or employed.

30th June, 1834. Entry in journal, p. 231, items of $25,000. Credit, No. 84, 5-6-7-8-9, 90; don't recollect having directed this entry; don't know what entry is referred to in P. T. deposition as per account.

Paper O. B. B. It is my handwriting; presume it is correct.

Juror. If I wanted a true account of R.'s accounts, I would not trust these books.

B. Bates. There was a cashier in post office, in New York, who attended to its money transactions; not under my direction; never knew a draft on the post office in New York in favor of contractors; don't recollect a single instance; drafts on post office were to make deposits in 7th Ward and Manhattan banks, or to meet checks. We deposited money received in bank, and sent certificates to Washington.

Samuel Gouverneur. Postages always deposited in Manhattan Bank, unless specially directed. Drafts never drawn on post office at New York in favor of contractors for transportation purely; only drawn on post offices where there were no banks to deposit in.

Juror. By purely, I mean for services under a contract. Contractors were paid by checks of department on bank; our voucher was the certificate of deposit; there were other drafts made to raise money.

Hardly knew R. till 1834; then he brought me a letter from the Postmaster General, giving him an unlimited credit with my office. Objected till letter is produced or accounted for. Defendant calls for a copy of the letter. I have not the letter; have tried to get it, but cannot; think it was an open letter shown to me as his authority, which he could show to anybody. Communicated to Postmaster General what was done under this letter, and he approved it in the highest degree. Mr. Barry said to me substantially that these transactions would not appear on the books; that I should have no trouble about it.

B. Bates. R. came to post office in January or February 1834. R. went to Gouverneur's room, and then came to my room, and I think had a letter, and gave me evidence of his being in confidence of Postmaster General, and showed me a large number of drafts drawn by him on department, accepted by department, which he wished me to get discounted for use of department; which I did as to a part, and was approved by department, and I had direction how to appropriate the money.

I paid checks of defendant to 7th Ward Bank, nearly, to $8,000

which was raised in Boston, and $3,000 raised in New York; sent $16,000 to Boston; got only $8,000 discounted; at last $19,000 were left with me, may be more.

Juror. I paid over the money, and had my accounts credited for.

The letter was confidential.

There were two batches of $19,000; the last in May, 1834.

James Reeside, V. D. I presented a letter from Postmaster General to Mr. Gouverneur about the time I began to raise money for department. I think I left it with Gouverneur; it was a general letter to authorize me to raise money at any post office. Don't remember of seeing it since—never looked for it.

S. Governeur. I have often searched for this letter. This letter designated R. as agent to raise money, and requested me to aid him, and I did so, and stated it to Postmaster General, who said if it had not been for R. and me, the department must have broken down.

Hamilton offered to lend money, &c. R. came to New York with 50,000 drafts. Hamilton raised the money, but not on the drafts, on account of the bad credit of department. Those identical drafts remained in possession of Mr. Hamilton, and were returned by him to Mr. Kendall.

Mr. Suter is mistaken undoubtedly as to any substitution whatever.

There was an error in one draft, which was sent back, and another substituted.

I was not in Washington within two months of the time.

I have compared my transactions with books in department, so far as I have had access to them, but it has been refused to me by Mr. Washington, and I applied to Ct. to compel it.

I delivered Mr. Kendall some drafts for the purpose of taking drafts and the amounts, he kept them. I required payment, credit for them, or the delivery back to me. He would do neither.

Have seen official statements of my accounts of these transactions, not entered on books by Barry, but were entered by Kendall, who charged them successively to different persons, and refused me credit till I could find some one to charge. Drafts were as thick as hail—$70,000 or $80,000 in New York, in R.'s name, and were large everywhere. I endorsed some in Boston.

I was allowed by department 2½ for endorsing, and 2½ more for raising money; this I think is usual mercantile amount in private transactions.

Juror. Know of no agreement between R. and department as to commission. Believe these are the drafts given to Mr. Kendall by Mr. Hamilton. He received only $40,000, amount of nett proceeds was $34,482 44.

5th February, 1834. Letter written by McKenna, signed by Reeside—the negotiation referred to in this letter failed, and nothing was done in it.

Mr. Page. Mode of paying contractors varied, sometimes contractors were paid by drafts on us—not as a general rule. In 1833, '34 to '37, postages were deposited in bank to credit of department, excepting so much as I was called on to apply to the redemption of drafts.

Doc. 102, Senate, 1834 '35, p. 286. This is my examination before

the committee; it is as stated here correct in the main. My answer to first question there put thus explained. There were only two mails through; the way matter was divided at Trenton. The 10 o'clock line was a division of the heavy matter that had gone by fast mail, and was sent by the steamboats for convenience of contractors.

The exceptions to the usual course of department as to paying contractors are:

28th of April, 1834, paid Schuylkill Bank $1,000; 8th May, 1834, $1,000; 13th August, $1,000; 25th August, $1,500; 17th September, four drafts, each $2,500, and some others; 30th December, $5,000; 29th January, $10,000; 14th February, $10,000; 16th February, 1835, two drafts, $2,500; 7th April, $5,000; 15th April, $10,000; 4th September, $10,000; some drawn on me; some by R. on department, &c., &c., none by R. on me.

There was nothing on drafts which could guide me as to the objects to which they were applied. Was written to by department more than once, directing me to pay. I sent all the letters on the subject to the department.

Juror. I recollect paying no drafts conditionally accepted by department; my impression is, that these drafts said nothing as to being for transportation. I send them to department as my vouchers.

2d February, 1834. To what check does this letter refer? It was a reply to me from department.

30th January, 1834. O. B. B. to Page—send 2 transfer checks—$27,000; and refers to those transfer drafts.

No difficulty in identifying the drafts for $62 50.

T. B. I. Grisworld. Was agent for R.; have made deposits of money for R., and a large amount in 1836; part obtained on a use of his farm in the neck.

I drawed checks on the bank for it, and applied the money to take up drafts on department by R., to amount of $20,000 or $30,000; and I gave drafts to Mr. Page, an agent of R.; don't know where they are; cannot give a list of them.

He had a bank book in W. Bank, F. and M. Bank, G. U. S. Schuylkill, Patriotic Bank, U. Bank.

Came to R. in 1833—R. had an account in Manhattan and Mechanics' Bank in this place.

I took R.'s book to banks to settle.

Mr. Poper died in 1837.

Don't know whether R. has his bank books; they were sent to his farm—one is in court; except R. has the others.

18th April, 1836. Mje. R. to C.—I.—Try for $20,000, offered and read.

Juror. Money was paid on drafts of department on R. Saw R. accept drafts from department. Plaintiff here calls for the drafts to show to the witness, which is included in the notice. We have no knowledge of them at present. Don't think I could identify drafts if I was to see them. I was in the habit of paying out $100,000 a week for Mr. R.

Know them only by Pajun speaking of them as furb.

I saw the drafts, they were acceptances of R.—not drafts drawn by

R. on department, and not accepted, but drafts of department on R., and accepted by him.

Supplemental Acc't, No 14. Before any evidence was offered on this item, plaintiff called on defendant to state whether they claim this item, as an allowed credit or as one rejected, and to be established by proof.

9th Aug. 1839. The statement of defendant's account by the Auditor, sent by him to the Dist. Att'y for suit, under act of 1836. As soon as asked for, it was sent to C. J. Ingersoll to take a copy as the account on which suit was brought, and is the only account received by defendant till the jury was proceeding in this case.

27th of Feb'y 1833. Def't refers to that item in this account. Cr. R. 3,000 for same service as No. 18.

1st Aug. 1833. In defdt's account presented at office in 1839, this entry—extra for detention in New York, allowed—suspended $6,000—compare with. Objection to reading the letter overruled by divided court. Plaintiff excepts.

6th November.

28th Dec'r 1831. R. to Barry on the subject of detention for foreign letters.

Endorsed allowed. Allow 4,500—residue referred for future consideration.

Allow the remaining $1,500. Read from document prlnted.

5th Jan'y 1832. Certificate of G. Carter, agent, that teams were employed.

31st Dec'r 1832. Certificate of S. L. Gouveneur—R. has been delayed for 3 years waiting for foreign letters.

9th Feb'y 1832. R. to P. M. Gen'l, enclosing these certificates.

17th May 1841. Gray, agent of R., giving a list of papers and letters, of which he desired copies—point (left to Whittlesey.)

29th May 1841. Gray to Whittlesey—do. def't of 10th Jan'y 1836, furnished R. with a copy—all def'ts in Jan'y 1835-36 of entry of 70 trips.

20th June 1841. Gray to Whittlesey, copies of checks 1494, 1581, &c., of entries in books.

1st of July 1841. Do. do. do., copies of certain contracts 425, 951, &c., &c., offers to put a force of 10 to 15 men on copying by Auditor.

Twenty eight of December 1831. Original letter endorsed.

23d July 1834. Gray to Whittlesey, copies of letters acknowledging remittances—complains of refusal of clerks to show books, &c.,

19th May 1841. Gray to Whittlesey, wants original notices as to items, &c., to make out an acc't for allowance—pointing out errors—to $4,500.

6th of August 1841. Do. do., protesting against the delay and your decision of the 4th inst.

Asks for copies of original entries in first book where entered.

9th Aug. 1841. Whittlesey to Gray, this office furnished Dist. Attorney with copies, and this saves the necessity of any further copies.

9th Aug. Gray to Whittlesey, copies of letters asking remittances.

14th Aug. Do. do. do.

17th Aug. 1841. Gray to Whittlesey, what is rule of dep't in estimating reductions.

15th Sept'r 1841. Gray to Whittlesey, copies of letters from dep't to R. in '33, '34, '35, &c. Are there any letters on R. pecuniary transactions with dep't.

Mr. Coxe opens an item 368, &c., on dr., side of official account, &c. Amount 23,000.

Cr. No. 78, &c., only 11,000.

Debit 337 to 345—31,983 26.

A paper transmitted to Senate acc't 28th Feb'y. Bank Metropolis, 7th Ward Bank—Patriotic Bank 31,983 26. Date of these charges.

Defendant's supplemental account. Item No. 1. Admitted by plaintiff, 93.

No. 16. Def't calls for original letter from R. to Brown.

Answer—Court is referred to entry of 25th Oct'r 1833, in Reeside's acc't. Cash for use of dep't, 4th of Feb'y 1833—3,000—and then further, plaintiffs calls Peter G. Washington.

I have repeatedly informed Mr. Gray that there was no letter from R. to dep't, transmitting money—know of no letter of which this is a copy—no letter from dep't asking receipt of money from K. to R., except. I searched for these letters in Auditor's office—nowhere else—know nothing of papers in office before I came there in Sept'r 1836.

8th November.

Dr. George McClelland.—In winter 1834, or in spring, R. said he wanted money on drafts—he selected 3 drafts, one 12, one 16, another 5; out of a buundle he held in his hand, 7 or 8 more—drawn by him; accepted by P. M. General. We went to Jaudon, who said he would discount one or two. J. told me he had discounted the large one. I did not endorse them. R. was sick. I afterwards called on him—he had a number of drafts not signed by him—near $60,000, though accepted by department by Barry or Browne—he had a letter from P. M. General, directing him to raise money on them—on their face they were for transportation, and were not so—not accepted conditionally—accepted in the usual way across the draft. I took the drafts to J.—not certain of the year; it was between 1st September and 1st May 1835.

No. 134, fol. Sundry drafts on postmasters not paid as per schedule.

10th November 1835. Draft by R. on Kendall for $5,000 accepted on condition, &c..

No. 162, 12th January 1836, protest, because conditions had not been complied with. Refers to letter of Gray to St. of 29th May 1841, respecting draft in No. 160—fol.—offer this draft, &c., with evidence that there is a judgment *vs.* R. for the amount. Objected.

It is a good set-off in equity—debt due by acceptance only—question is, on whom is the burden of proving the performance or non-performance of contract. Defendant alleges they have received no answer to the call on department for this draft.

P. G. Washington.—I have never seen such a draft. Mr. Clark called on me for this draft, and I said I had never seen it.

No attention was paid to Mr. Gray's letter—admitted. Plaintiff excepts.

Thomas B. Taylor.—Am a clerk in Bank U. States. Have examined the books of bank in relation to this item—18th February 1836, $5,026 42. J. M. Kean, defendant and protest.

10th August 1840. J. Lawer, Cashier Bank U. States, Pittsburg, to J. Gray; draft described—drawn by R. on J. C. Mason—accepted, &c., and protested.

12th February 1836. Credit D. Doorance, for defendant, 5,000, and applied to the draft at Pittsburg.

18th August 1836. Renewed by defendant; due 15th February 1837; renewed from time to time till 10th December 1839, and 16th November 1840—this is the last bill, 15th August 1840—R. to Slaymaker, endorsed by him and D. Doorance.

4th October 1841. Letter, John Uhn to John Gray.

David Doorance.—Saw the draft; the bank agreed to continue the loan on it till R. could get his account settled by the department, and the last note is a continuance of that transaction.

Don't know what became of the draft—it was in Bank U. States, when they discounted the note to take it up.

No. 161. 18th April, 1835. Draft of R. on department, $5,000, accepted on condition—protested because P. S. Laughborough was not in, and no funds endorsed to Harback, and suit by Harback *vs.* R. and judgment—on money counts arising out of the draft—objected—admitted. Plaintiff excepts.

No. 81. Supreme Court, 1840. United States *vs.* Bank of Metropolis, and papers in it.

14th November, 1837. Letter of Kendall to G. Thomas, as to No. 43.

5th January, 1835. Bates to R. as to drafts for $5,000—G. will get money on it to-morrow.

No. 44. Mr. Suter. The amount of this check was deposited to credit of United States in Bank of Metropolis. I received it from R.

Credit 100 in official account is for this check; this is all I received.

22d April, 1835. Check on Schuylkill Bank for $2,500—my impression is, that it is the same as credit of 18th April. I did not give this credit.

Apart from the entry of 23d April, I do not know about the credit of 18th April, but I surmise it is the same.

Deb. 446. Believe there was such a draft paid on that day.

Reg'd check 3665 for $2,610 to pay two drafts, one of $110, and of R. $2,500.

There is no payment by R. of this draft, except by this check of 22d April. Believe R. gave me the check on the day it is dated, the 22d April.

18th April, 1835. Certificate of deposit in Bank of Metropolis, credit General Post Office by R. $2,500.

13th May, 1834. O. B. Brown to Bates, enclosed checks for $10,000, Boston, &c., are the $8,000 due in Boston consumed.

No. 183. On contract for route. No contract No. 969—$375 a quarter—objected—admitted—plaintiff accepts.

15th October, 1831. Contract from Brunswick to Easton. Allowances by Mr. Barry; read the list; amount $32,781 09. Defendant

claims additional allowances under the same heads; being errors in calculating allowances actually made; not distinct claims for distinct allowances.

No. 6. Two items of allowances; 730 days is correct; No. 4 is short 151 days.

No. 48. Allowance is to 31st March, 1835. This charge is for an extension of time not allowed.

No. 7. Allowed by Barry 700 dollars; 10 dollars per trip instead of $125 per trip.

Defendant closes.

FOR PLAINTIFF.

Mr. Griswold called for cross-examination.

Plaintiff calls for acceptances referred to in the evidence of this witness. Answer.—We required a specification of the papers in writing, and it has not been furnished—and repeat the answer given. Defendant here admits that Mr. Griswold was mistaken in saying that the drafts he referred to were those of department on R., but his on department— and that they were his on the department.

Mr. Brown. Cross-examination resumed, as reserved, 9th April, 1834. The grounds of my opinion that these drafts were not for transportation account.

Drafts of 9th April, were, I think, for use of department. My reason is, that Barry said it was important for the public interest that the drafts drawn for department should be accepted without condition; know of no other reason for thinking so.

Draft 16th September, 1834, to be paid in New York. R. negotiated this draft at Patterson for $10,000. No reason to doubt it was paid by the department, though I don't know it; the entries in memorandum book of drafts are my handwriting.

Mr. Suter. Accounts were rendered to R. from time to time whenever he required.

Can't say when R. got the accounts; when he got one there was a copy left in department.

3d April, 1832, to July 1st, 1834. Account of department with R.

Senate document 1835, No. 86, page 118 to 139, offered to observe the coincidence between that and the official account; account admitted in evidence; defendant excepts; offered to show the character of the entries.

9th November.

Refer to two last items of credit and the quarterly accounts. Balance due R. $75. To show no discrepancy in the different accounts of the treasury; and that the materials of plaintiff's account were accessible to defendant, and how balance was made up—not as evidence of items.

Credit $21,000 of Bates' drafts is same as credit No. 183 in official account 79 to 83. Debtor No. 384–5. Call for R. bank book in Bank

United States. Answer.—We have none; notice given on 14th October, in writing.

Thomas Thomas, clerk Bank United States. Have examined accounts of R. from beginning of 1832 to this time; have searched for all drafts drawn on Post Office Department, in whatever name. This paper exhibits a list of all of them.

I made out this list—17 drafts, No. 1 to 17.

No. 1 same as No. 211, in debtor side of official account; offered to explain the evidence of Dr. McClelland. Objected.

(Dr. McClelland. Think the transactions I alluded to was between the 8th and 30th March, 1835, after an operation I performed on him on 8th March: this is my recollection.)

Last draft was August, 1834. Rejected so far as offered to explain Dr. McClelland.

William D. Lewis.

22d April, 1835. Received this check in a letter from Mr. Thomas, cashier Bank of M., dated 18th April, 1835. No other check of this amount was received from that bank. Post mark 19th April; received 20th, and credited to Bank Metropolis same day.

Call for R. check book on Schuylkill Bank, for April and May, 1835, produced. Read entries of checks by R. 22d April. Suter $2,500, (1835.)

James S. Riley, jr. W. clerk in Schuylkill Bank; this is book of bank.

Account 1st April to July 1st, 1835. Only one check on bank in that time of $2,400; charged as paid 20th April, same day. Discount to credit of R. $4,428; balance to his credit, $900.

Pishey Thompson's deposition.

Refers to check book of department, and entries on margin, check 12,000. W. B. of Philadelphia.

13th May, 1833, in handwriting of O. B. B., refers to debt 283,286, (in Thompson's dep't.)

May 4th, 1833—12,000. Requisition same day, 4th May, 1833, ask a check for 12,900—900 for three small items, and 12,000 for R. drafts in item 283 to 286. Objected. Admitted and excepted. Admitted on the allegation of Mr. Read that he was taken by surprise in not offering evidence in chief of items admitted by Mr. R. in his account.

Also to admit any evidence by plaintiff to support his account. Defendant excepts. Requisitions and checks read for $12,000.

Dr. 287. Requisition and check for this item and two other items, making $1,697 83, to the order of Deforn. Objected.

Dr. 295. Requisition and check $2,000, to order of Taylor. Objected. 336 check for $1,090 to order of R.

Defendant objects to evidence of checks not payable to order of R.; admitted.

Check of 12th June, $2,000, No. 267, and requisition as corroboration of defendant's admissions of this item as proved by Mr. Suter to be genuine.

Mr. Suter. I made out this requisition with drafts before me; know nothing more than what paper tells me now; check in cash book. (Objection to cash book admitted 12th January.)

Dr. item 343 to 345, check No. 1521. In margin transportation; four drafts $10,983 26, covering these three drafts $8,983 26, and a draft of $2,000, dated 11th December, 1833.

The checks $3,938 26, to Dyson; $1,000 do.; $4,500 do.; $1,500 do.

Cash book, page 129, objected to. No requisition accompanies these checks. Rejected till requisition is procured or accounted.

Mr. Suter. Body of check is handwriting of E. F. Brown, a clerk in department of O. B. Browne, and margin of check book also. One not endorsed by the payer.

Question.—What was the usage of department in giving checks for transportation, as to the making out of a requisition. Objected; admitted.

Usage was in all cases—a general practice—rule of department to issue checks on requisition.

Mr. Suter. I never knew this usage departed from.

Peter G. Washington. I searched all the papers in the office, for evidence to support the items of this account. Requisition of 1, 2 of 1834 could not be found. Explained the burning of the Post Office and Treasury Departments.

All this offered to prove that the checks referred to in Thompson's deposition, included money paid to R. and charged in debtor item 337 to 345, not new charge. I brought with me all the papers relating to R. accounts.

Requisitions and checks are kept in separate bundles in separate pieces of paper.

10th November.

James S. Riley. This is discount book of bank of Schuylkill. Draft R. on R. C. Mason, 10th April, 1835, payable 20th July, $4,500; nett $4,428, same as debtor item 454.

Credit No. 91, 20th September, 1834. Debtor item 425 offered to show the receipt by R. of the proceeds of draft discounted in Patterson Bank.

Brown King. Was book-keeper in Patterson Bank in September, 1833. R. obtained a discount there, the only one he had; these are the checks for the proceeds, and were paid by bank; no certificate of deposit given R. on credit to Post Office Department. Checks are beyond credit between two and three dollars. Credit is $9,847 12; 26th September. These checks account for the whole proceeds of this discount of a draft on O. B. Browne by R.

September 16th. Debtor; due 18th December, 1834. Discount $152 88; exchange $50—$202 88. Plaintiffs call for the first deposition of R. M. Johnson. Answer.—It was brought into court two weeks ago, and handed to plaintiff's counsel.

Bank book of Post Office Department with Washington Bank offered. Objected and suspended.

21st July, 1840. Offer a deposition of R. M. Johnson, referring to the $6,000 testified to by him in his deposition read by defendant. Read; refers to his two letters annexed.

24th February, 1840. R. M. Johnson to R., as to checks sent in 1833 to Barry.

19th January, 1833. do. do. do.

17th January, 1833. Check by R. to bearer on Schuylkill Bank, No. 135, for $5,000; annexed to deposition. Offer bank book of R. in Schuylkill Bank, in which R. is charged with a check for $5,000, on 17th January, 1832.

17th January, 1833. Offer two checks by W. Bank, Philadelphia, on Patriotic Bank, favor of R. endorsed to R. M. Johnson for $5,400: endorsed by R. M. Johnson to R. Smith, cashier. The other check C. Bank on United States Bank to W'n to R., endorsed to R. M. Johnson, and by him endorsed in blank for $600.

Plaintiff calls for R. letter book, January, 1833.

J. Reeside, V. D. Have no recollection of having a letter book in early part of 1833.

I was here on 14th October; live in Parkersburg, in Virginia. Mr. Yued has all the books and papers connected with my business; the book now produced was found with Mr. Yued.

4th November, 1841. Certificate of R. Smith. Extract of account of R. M. Johnson with Bank United States at Washington. Credit 22d January, 1833, one of $600, the other $5,400; balance then $3,668.

22d January, 1833. Dr. three checks $452 50; 23d, check $1,000, 26 do. 10—28, do. $1,000 $302, do. $522 31; 1 do. $250. 4th February, 2 do. $330: 5th February, credit discount $1,513 91; same day four checks. Dr. $4,770; 11th February, credit $150 06; 12 do. $2,956; discount.

4th November, 1841. Certificate of private account of W. T. Barry in Bank United States at Washington.

23d January, 1833. Credit of $1,000 on that date was charged to R. M. Johnson; same day credit $989 33.

Plaintiff reserves the right of asking for a statement of R. Smith, as to the account of Johnson & Barry from 1st January to 1833, to 22d. Not allowed.

Mr. Griswold. Mr. Pogue was clerk of R. in early part of 1833: letter. I don't know the handwriting of the endorsement on R. M. Johnson letter. Have you seen among R. papers a handwriting like this? Objected and withdrawn. Offers to show witness the index of letter book of R. beginning of July, 1833, to show that R. has a previous letter book. Objected and withdrawn. What handwriting is the entry "R. C. Stockton, 50," in R. book? Answer—Think it is Mr. Pogue's.

As to Patterson draft.

Levi Knowles, jr. Referred to Senate document 1835, No. 86, page 353; deposition of witness before committee of Senate.

20th September, 1834. R. deposited small notes in W. Bank of Philadelphia, and four or five of $1,000 each to credit of Post Office Department, $9,843 34; and so entered in their bank books, which is this bank. Offer this entry in bank book.

Debtor items No. 474 to 477: admitted evidence on these items by consent, though not included in this suit, in order to settle the whole subject of controversy between the parties.

15 Pet. 406, printed record of suit United States *vs.* Bank of Metropolis, read by consent.

Benjamin S. Perry. Examined in Treasury Department after fire, for vouchers of Post Office Department. Have been two years a clerk in Register's office, and in 1840 the 5th Auditor's papers were put into my hands and care. Last of these papers were of 1832, first quarter. Papers were removed from old fire proof in treasury building to my room.

14th December, 1840. Order to Mr. Perry by P. G. Washington to produce vouchers of R. accounts. Here are all R. vouchers we could find from 1828, and Williams' receipt for them.

15th October, 1841. Made a second search and found the vouchers noticed in this list, from 25 to 27.

On Saturday last, found three other vouchers, which I gave Mr. Wn., filed in bundle of first quarter, 1826, found in a box shown me by Mr. Mountz, an old experienced clerk in Register's department.

Mr. Suter. This is journal Treasury Department for 1826; date of entry, 2d October, 1826. James Boyd debtor to Reeside, &c.; difference 11.

Page 231 on journal; entries as to the $25,000 draft of the Hamilton & Gouverneur transportation.

John B. Wheeler. I made this entry by direction of Mr. Brown.

No. 4 of R. claim in first supplemental account. Credit item No. 72, $13,680; claims $27,360.

22d April, 1833. Hobbie to R. Forward your account *vs.* department for extra mail ordered last winter.

12th December, 1833. Senate document 298: session 1835; document 86, Post Office Department to R. debtor, $13,680. $1 per mile, which was the customary price, $2,500—$16,180.

1st April, 1834. R. charges $13,600, which is allowed.

John A. Weart. Was a sub-contractor under R. from Trenton to New Brunswick, twenty-six miles, from 31st January, 1833—first four or five days it was with one horse to New York by R.; we furnished the horses by the trip—after that we run it by contract as sub-contractor till 8th March—one month four days; two horses each way. Twenty horses used every day, and four or five in reserve. We received $1,885 for the whole time—we did the whole work, and did whole service. Mr. Still run from New Brunswick to Jersey City. I would have run the whole for $8,000, if we had assurance that it would continue.

Juror. Not without such assurance, as department could stop it when they pleased. We hired horses to R., for some distance, at reasonable price—we charged for the horse alone one dollar per mile—our horses run five miles—R. found rider and paid all expenses; this is our usual price. R. fed them while he used them for first four days—no extra mail from New York.

We lost no horses—R. lost some and injured others.

Our usual price for a single ex. was $100 from Philadelphia to New York, and sometimes $75 running one way—we had a number of horses idle that winter. When we run an ex. it took only a letter or packet, to put in the rider's pocket.

Juror. We never run an ex. by mile, or hired horses for it.

Pay night riders $20 a month, and boarded—in 1838, under a contract from Bc. to Frenderick, Va., for $17,500——105 miles—one horse—fast contract, and heavy mail—exceeds twelve miles an hour.

Department calls for this contract. Answer. It shall come.

William H. Still. In 1833 run ex. from Bk. to J. City, thirty-one or thirty-two miles. Began 4th February, and run till 8th March, two horses each way; was employed by R.; I paid all expenses; received $1,942 for my services; often hire horses for ex. From 4th of February to March 8, employed from twenty to twenty-four horses ——few horses injured—usual price of hire of a horse for one trip is $5.

No. 6. Defendant's supplemental account.

30th April, 1833. Letter R. to Hobbie. Have arranged for additional teams, and ordered a guard. At foot—guard necessary between Hd. and New York.

3d May, 1833. Hobbie to R. Pleased that you have ordered a guard.

Difference No. 15 and 16. This is cr. item No. 197. Cr. $1,338—— For defendant with leave. $3,014—$1,338.

18th April, 1834. Suter to R. Return you a draft to replace one returned by you 11th November.

John Good. As to books and papers of R., have had care of all of them; have never seen but one letter book—the one that is here—produced yesterday. Took charge of them in April, as an agent of R., to settle his accounts and keep them safely. Only know what he sent to my house—don't know what books he had in his counting house—these are not all, only such as are required by court, under a notice—others are receipt, account, and bank books—three or four (find only one) meant to bring everything required by the court.

The notice was in my hands. R. desired every book should be produced, and I believe they are all here. I saw only one notice.

Juror. Never saw any other books than such as are here.

Certain no bank book has been overlooked by me.

James Reeside. No books are left at my farm—a cart load of way books. Can't tell what has become of the bank books stated by Mr. Griswold. Have no books or papers relating to this suit, not in possession of Mr. Gray and Good.

Dr. item No. 474 to 477. Certificate of cashier Bank Met. that these drafts were paid by Post Office Department.

Mr. Suter. As to No. 9 in defendant's first supplementary account. Draft mentioned in this letter was cancelled when new draft was accepted and sent on.

Dr. items 379 and 380 are supposed to apply to this item No. 9.

28th May, 1834. Requisition and check for, &c., to pay B. draft. 7th April, 1834, for $2,500; do. $2,500; check same day, $12,000. For these items enter alias transportation—four drafts—when requisition was made for payment of a draft, it was in defendant brought up by bank and left with department.

Certificate of R. Smith, as to this item, has this entry—28th May,

1833, paid two drafts of 7th April, 1834, &c., paid with other drafts by check on Manhattan Bank, $12,000, on 28th May.

No. 10 in defendant's folio account.

Debtor item 290, 18th May, 1833. Requisition R. draft, favor of Belt, $431. Check same day, $15,781 85. Fr'n six drafts.

18th May, 1833. Requisition for $3,000. Defendant R. 8th January check to Weightman.

9th September, 1841, 8th November, 1841. Certificate of John R. Hill, list of six drafts. Interest allowance discontinued [discounted.] 12th January, 1833, for R. his draft accepted—Gardiner, Assistant Postmaster General, for $3,000: 18th May, 1833, in State Bank of New Brunswick.

16th October, 1841. Certificate of Adams, cashier Bank of Washington, of payment of draft of R. 8th January, 1833, payable May 18th; paid same day for $3,000

26th August, 1841. Certificate of Smith, cashier of Commercial Bank, of payment of that draft—discounted. Received from Bank of New Brunswick for R.

Debtor item No. 12, in defendant's account; debtor item 280, admitted in R. account.

4th April, 1833. Received for $225 27 to pay draft, J. Horton account, R. dated 3d April, 1833, favor of E. Coole; returned drafts favor of G. E. Dyson; cash check same day on Bank Metropolis, same amount. Horton admitted to be agent of R.

Mr. Suter. Item of $218 27 in R. book, is composed of 25, neither charged on [or] credit. $140 78, $52 49—$218 27. 279 is not same; this $140 78 was draft on 1st January.

Juror. Don't know how debtor on this item of $225 27 was made up.

1st January, 1833. Drafts on postmasters $1,873 34 not in account debtor or credit; charged in debtor item 241 to 270, $1,655 07, $218 27—$1,873 34.

1st January, 1833. In defendant's account is a credit—drafts on sundry persons, $1,655 07—difference, $218 17, page 361, Journal 3d March, 1833. Sewd debtor to B.—R. A'd left $52 49; 25, $146 78—$218 27.

No. 13. Defendant account, debit item 298, 299.

298. Thomas statement from Bank United States. Defendant 28, 1833, due July 18—credit R. $3,967 33, purchased from R.

299. Bradley's certificate and schedule; draft discounted $3,000, due 18th July, $1,000 for R. 1833.

18th July, 1833. Requisition and check including 298. Same date requisition and check; draft of R. $4,000.

The $7,000 draft is debtor item 307–8.

3d August, 1833. Requisition and check included draft of R. $4,000. 28th May, 1833, do. $3,000—on 307. Reserve Whitfield's deposition.

4th June, 1833. 308—discounted in Bank Schuylkill, credit R., 3d June in his bank book—O. B. Browne discount $3,957 33.

3d August, 1833. Paid at Bank United States, Washington; received from Schuylkill Bank.

No. 14. Defendant's account.

Page 207, Journal, 31st March, 1832, transportation debtor to J. R. from 1st January, 1829, to 31st December, 1831, $4,500 from New York to Philadelphia.

Credit item No. 566 is for $3,000, including the remaining $1,500.

No. 15. Defendant's account. Plaintiff refuses.

No. 16, withdrawn.

No. 16. Defendant's account. Debtor items 337, 345. Admitted in R. account. 338, 339, paid by check on 7th Ward Bank, New York, for $7,000.

340, 341, 342, paid by check on 7th Ward Bank, New York, for $13,000, including one of $1,000.

343, 344, 345, by checks $10,983 26, on discount books: one of $3,983 26, in Pk. Bank.

337, paid by a check on Bank Metropolis, in favor of W. B. Lewis, by him endorsed.

James Hunt, cashier Manufacturers' and Merchants' Bank. As to No. 338, draft of $4,000 discounted for R., dated 19th October, 1833, payable 25th February, 1834, credit to R. and drawn by him by checks 339; discounted 18th December, 1833; purchased from D. Dawage, discounted for D. D.; Bank United States, 342: credit Bank Metropolis discounted. Credit E. F. Browne, 4th December, 1833, $3,944 67.

6th November, 1841. Deposition of Mr. Marcrose. R. account, Patriotic Bank, Washington, 3d December, 1833, credit R. $3,940, deposited and checked by R.

344. Certificate of Bradley, 3d March, 1834, draft not described: memorandum of R. book page 1, disposed of draft of $3,000, 25th February, 1834, (due then) to W. A. Bradley.

345. Resume Mr. Whitfield.

343. George Hawbold. W. Bank discounted to credit of R. 30th October, 1833, of drafts of R. on O. B. B., dated 19th October, due 25th February, 1834, charged to Patriotic Bank, 4th March for $3,000.

Mr. Lipscomb, evidence as delivered before, is applied to the entries on the paper signed by him.

341. Wm. D. Lewis draft R. on O. B. B. for $4,000, due 25th February, 1834, discounted and cr. to R., $3,930.

31st December, 1833. To send date of draft, and bank to which charged——refers to Whitfield.

No 17. Plaintiff says this is the subject of the faint pencil marks in p. 61 R. book, 24th February, 1834. Memorandum of O. B. B., four drafts due 5th May for use of R. Dr. item 367, 366.

8th May, 1834. Requisition and check for $2,000.

No. 18.

12th November. Pumos to No. 15 and 17. There were four drafts of $4,000.

338. Was collected for Manufacturers' and Mechanics' Bank, $4,000.

340. Is collected by Bank Met., for Man. Bank, N. Y., $4,000.

341. Was disc'd. in G. Bank, and collected in Bank Met.

342. Discount for E. F. Browne and paid at Washington.

337. Paid by check on Bank Met. in favor of W. B. Lewis, &c.

James S. Riley certificate R. draft on O. B. B. 19th October, 1833, due 25–28th February, $4,000, discount for R. and paid by him. This draft not sent away for collection. Offer evidence from the Bank of America is to 345, and the Chemical Bank as to 307, by books of bank and witnesses. Objected. Objection not sustained, court being divided.

John W. Thorne. Officer of Chemical Bank. These are the books of that bank.

307. 5th June, 1833. Draft of R. on O. B. B. for $3,000, dated 28th May, due 1st–4th August, discounted and credited to J. Whitfield—H. B. drawn out by check of Whitfield.

347. Richard N. Wermel. Officer in Bank of America. I W'd. offered draft of R. on P. O.—— $2,983 26, due 25th–28th Fedruary, 1834, no date ; cr. $2,910 55 Patriotic Bank—collected and gave credit for it.

No. 18. Refers to 367, 374—$3,000.

No. 19. Refers to 371, 372, cr. items 80, 79.

No. 20. To item of $5,000, is No. 371, 372, and credit 80, 79. Check for them is No. 1,865.

Two items of $5,000 checks, $1,959 60. No. 378, cr. 87 to 90; $379 80. Check No. 1,971. These are three distinct items.

No. 21, 22 ; No. 366, 374, admitted by defendant's accounts. 23, 24, and 25 ; is four drafts kept by R., $10,000 ; 379, 380, dr. to R. check 1,971.

No. 26. Defendant never charged. 28th March, 1836, letter of Hamilton.

No. 27 is a claim of cr. for an item not dr. to R., in Washington Bank book of P. O., 2d August, 1833. Cr. $10,000—105—9,895.

P. 27. O. B. B. Bill book, R. C. Stockton draft on dep't., in favor of R., $10,000, paid 28th September, 1834, payable W. Bank, Philadelphia,

Mr. Tastil. This is my pencil memorandum entry in bank account of dep't. of W. Bank, kept in office. Cr. R. C. Stockton draft $10,000—105—9,895, by order of O. B. B. Cash book No. 2, df't. charged to Stockton check 2,501, 4th October, 1834, on W. Bank for $10,000, not charged to R.

Certificate of Mr. Tastil, made out for plaintiff and agreed to be read. 30th April, 1834, drafts dated 28th April, by Stockton, at three months for $20,000. Three months R., same date, $20,000 at six months—post entry—drafts reversed. Stockton at six and R. at three, and books made to correspond. Error was crossed and corrected by inserting R. name in place of Stockton.

John B. Trevor. Deposition. Senate document, 1,835. Document 86, p. 340, assumed to be true.

Loan of $50,000, paid by cr. $10,966 66—$19,386 67 ; cr. by Stockton ; proceeds of his drafts endorsed by R. $19,386 67, proceeds of his draft due 2d August, charged to defendant, when a draft for $10,000, dated 21st July, at sixty days, discounted by R. to cr. of dep't. Stockton's draft, due 2d November, for $20,000, paid by Dr. to dep't.

Draft $10,000, due 4th October, dr. to dep't. $9,843 34, discounted by R. to aid the dep't. to pay.

1st August, 1834. Drafts on department discounted for $10,000. Cr. R. 9,865. R. draws check for it; same day put to cr. of department. No memorandum of draft.

1st August. Ledger entry, R. C. Stockton, 9,895.

2d August. In bank book O. B. B. Treasurer 9,895.

2d Aug. Discout book J. R. discounted. R. C. S. drawer; O. B. B. acceptor; cr. R.

Call for check book of R. with Bank of Philadelphia; produced.

1st August 1834. Check for P. O. dep't, 10,000—9895 in margin disc't.

Aug. 1834. Letter R. of R., 20th Sept'r—R. to O. B. B. interest cwt. of def't for 91 proceeds of draft in Bank of Patterson.

27th Jan'y 1835. R. to B., enter the 2 drafts to my cr., making cr. 20,000 more than before.

Mr. Coxe—This is the letter we called for in May, and never read.

Mr. Washington—I found this letter very recently, &c., &c.

No. 28. Senate doc., 137. 30th June 1834, cr. R. by drafts 2 of $5,000—cr. 83; dr. 384. Requisition and check 2228, 2229.

No. 29. None of Gouveneur drafts are charged to R.

" 30 Cr 77. By cash dr. 392. Requisition and check for 20,000, to pay R. C. Stockton draft, 28th April, check No. 2317, on W. Bank, 20,000.

No. 31, 32. Not charged to R. the 25,000 met by cr. 84 to 90.

No. 33, 34. No evidence has been given on these items.

r. Coxe—We shall offer these checks showing them.

No. 35. Cr. No. 91 meets this.

No. 36. No evidence by def't.

No. is debit 458.

No. 38. Cr. 97—dr. 435.

No. 39. Cr. 92—dr. 432.

No. 40 is a claim for this sum twice dr. 435.

No. 41. R. letter of 18th May 1836, only 15,000 of this charged to R. by dep't.

No. 42. As contractor was bound to receive these drafts, he must collect them or return them to dep't—no evidence. Item for 20,000, *vide* letter of R., 27th Jan'y, 1835—a memorandum on back of one of Page's vouchers which explains this letter.

No. 43. In def't 3d account shows the true amount—No 79 to 83 cr. item.

3d January, 1835. R. to Gouveneur—Get 2 drafts discounted, and send me proceeds—6,5000.

9th Jan'y, 1835. R. to Gouveneur—Draw for 9,000; drafts was for 6,500.

5th Jan'y, 1835. Bates to R., shows this transaction to be for R.'s use.

No. 44. This is the check refered to in cr. 100, the check of 20th April.

No. 45 repeats 43.

No. 46. R. as much accommodated as department.

No. 47. Not omitted—cr. 112, is same item.

No. 48. Matters of law on construction of the contract as it was illegal.

No. 49. Difference No. 10.

No. 50, 51. Cr. 143, 146. R. acc't claims in p. 6.

Mr. Suter. R. never claimed a larger account from Milledgeville to Athens, and W'n to Decatur, than stated in his acc't p. 6.

These contracts were divided in July 1835, between R. and Avery, joint contractors.

No. 52. Is credit in full cr. 151, 53,54.

No. 55. R. letter 18th May, 1835, of R. admits this was for his own use, No. 461.

No. 447. Is a different draft. Requisition and check 22d April to pay draft of 6th Jan'y.

No. 56. Is cr. 81, 82; dr. 368. Disc't of Bates, draft.

No. 57, No. 373, is 17th May 1834. Is only a charge of 6,000; requisition and check for 10,750, for 2 drafts of R., 8th Jan'y 1834, 4,000 and 2,000.

3d account embraces only items already explained.

4th account, 126 and 127, are 2 of the 5 checks making dr. items in part 367, 368.

No.134. Keeping drafts 2 years releases sureties.

No. 160, 161, 162. None charged to R.

5th account, No. 182. No evidence offered.

6th, account No. 83. R. transferred this contract to Mr. Sharpe from beginning.

Mr. Suter.—R. book, pp. 44, 46, 48. In dividing pay on contracts of R. & Co.—this contract was assigned to Mr. Sharpe and he has been paid quarterly. R. never claimed it.

No. 193. Check 10th March, 1830, to R., endorsed by him, $1,217.

13th November.

Reviewed item $6,000, testified to by Colonel Johnson.

16th January, 1833. Check account R. M. Johnson $1,000, W., Bank; $10,000 draft to R. C. Stockton 9,895. Requisition and check.

4th October, 1834. Transportation draft No. 2501.

2. August. Cr. Stock. $10,000—4th October, dr. 2 items of $10,000 each.

P. 244, cash book—cr. cash by R. C. Stockton, paid draft 31st July, 1834, to R. $10,000.

9th April, 1834. Drafts dr. 386 to 401, except 392, which is distinct.

Call for R.'s bill book as to dr. No. 399. None found.

James Calham. In 1834 was an officer in Bank of Ch'g. Draft 9th April, payable 25th August, 1834; check on O. B. B. $1,000, discounted 16th June, credit W. B. Thompson, charged to Cohen's Bank, Baltimore.

Draft offered at Bank Ch'g, due 2d–4th August; not discounted—1835. Objected. Stopped.

W. P. Thompson, agent of R. in 1834, for Stockton, Stokes & Co., of which he was one—the $1,000 draft mentioned by Mr. Calham, was for use of R., and applied by him.

No. 394. J. B. M. Strain. I purchased this draft from R. through a broker, paid part in wine and part by check.

What was the value of such paper in money, in market, not A. No. 1.

I did not know R., took it on credit of department.

George Humbolt. Two drafts, $2,000 each, discounted in W. Bank, dated 9th April, 1834, $387; due 10–13 August—25–28 August, then discounted 10th May, $398. Discount unknown. Credit to R.

No. 388. Draft 9th April, 1834; due 10–13 August; collected for Henry Elias, $1,000.

Henry Elias. This draft I bought for H. Boyd, payable 10–13 August, 1834; such papers sold at various prices, at about 1¼ per cent. a month.

395. Cert. P. Baker, clerk in Merchant's Bank—draft R. on O. B. B. 9th April. 20–23August, 1834; collected by the Bank of the United States, at Washington, $1,000.

James S. Riley, 386, 393, 396. Draft R. on O. B. B.

9th April, 10–13, August, $1,500, collected for James Campbell. Do. due 20–23 August, $200, do.—do. for $2,000, due 20–23, collected for C. M. Page, for $1,000, collected by Bank United States, at Washington.

Called for R. Letter book of R. for April and May, 1834; produced.

3d April 1834, p. 43. R. to Thomas Cornwall, as to note of $100.

23d April, 1834. R. to W. Kemble as to months.

27th do. 1834. R. to Bates—hand to Whitfield balance due on acceptance.

27th do. 1834. R. to Whitfield.

29th do. 1834. R. to Gouverneur—Sand 3 acceptances, and to destroy them.

30th do. 1834. R. to R. C. Stockton; signed, endorsed, and paid to J. B. Trevor.

3d May, 1834. Pogue to R., as to draft on Sch. Bank.*

5th do. 1834. Pogue to R., as to draft on Sch. Bank*

5th do. 1834. Pogue, for R. to O. B. B., draft of Miller, &c., for $400.

11th do. 1834. R. to Kemble as to months.

25th do. 1834. Pogue to Reeside—payments of $5,000, &c.

26th do. 1834. Do. do. do., as to the 4 or 5.

27th do. 1835. Do. do. do., things go smooth, &c.

James Campbell. The drafts $1,500—$2,000, came into my hands in May and June; discounted them for Mr. Dubbs; collected through Schuylkill Bank—379; had another of $2,500—think collected by J. Campbell, Washington; due 25–28 May; in my bill book there is 9th April as to the two first—drafts sold at rate of 2½ to 2¼ per cent. a month—saw a good many of them.

W. J. Watson. As to 381, 21st June, 1834, requisition and check for draft $1,968, No. 381. Have some indistinct recollection of having

* Why write to R., if not drafts of accommodation?

had a draft of R. on post office about that time—my impression is, it was intended for transportation for C. and Amboy railroad.

309. Collected for Mechanics' Bank, New York, requisition and check, $1,000.

391. August, 1834. Discounted for Mungus, $1,000; cr. Mungus.

397. Collected for Farmers and Mechanics' Bank, Philadelphia. From No. 1 to 211, of dr. items, the original drafts or checks to order are in—cannot except 1, 4, 6, 16, 31, 34, 39, 55, 58, 59, 69, 78, 84, 89, 97, 109, 132, 147, 148, to 157—158 to 161, 166, 171, 172, 182, 187, 196, 197, which are destroyed—are generally re-credited and are of small amount.

From 1st April '32 to June '32, we have only to 211. None of 1833 and 1834. From 198 to 211 complete. 457, 458, drafts produced—accepted by Kendall.

21st August, 1832. List of drafts by R. on Post Office Department, ending 3d July, 1835—compared with cash book certified by Mr. Lipscomb from 225.

This list embraces all drafts except 335–6, which were checks 366, 374.

Journal R., p. 219. R. to Page dr., $1,000 his draft, 24th February—60 days, paid by Page, 366.

Journal p. 221. R. to P. dr. &c., $1,000.

382. Check produced and read.

400. Not in list. Journal 271, R. dr. to P. for $1,000—401, do. p. 273 dr. R. contractor. Fines are entered on the Journal.

426. Omitted; p. 325, R. contracted dr. to Page.

433. Do. Journal 382, R. dr. to Page.

436. Journal 383, R. to dr. to Page, $5,000.

441. Do. 433 do. do. do do. $5,000.

458. Draft produced—R. to order of Saltmarsh.

Mr. Suter, 459. This was cr. to Watson and charged to R. by his own direction.

461. R. letter, 18th May, 1836, to Kendall.

10th April, 1834. O. B. B. to F. Grundy, loan $325,000 over drafts $126,000.

Statement of Mr. Gouverneur. Drafts discounted in bank are cr. to R.

Mr. O. B. B. memorandum of drafts accepted for use of R., $31,783 26.

Papers relating 312–13, 334 to 342, 367 to 70, 432, 433, 448.

Alleged mistakes in the office account prior to 1st April, 1832.

Contract 303, with Doorance, 27th May, 1831, to find guards.

30th November, 1833. Report of Postmaster General, document 1, p. 446, with President's Message, 1833, relating to the retrenchment of expenses, $274,000.

Route 951. Senate document 86, p. 348, R. offers to carry mail, &c., $6,000 or for $19,000, increased. 16th November.

Brown's book contains all the drafts in p. 11, and 11 in office account; none on p. 12, 13, 14; p. 16, 17, 18, three or four are noted.

Suter's book, p. 59, 61, 63—every draft not in Brown's book is in this.

Branch Bank credits one draft which department paid and did not charge. It is in Suter's, one of 9th April, 1834.

Neither of these books are ours.

Mr. Suter refers to Brown's report and letter of 10th April, 1834. I have no knowledge of R. drafts entering into the loans—would, I think, have known it had it been so; have no knowledge about it.

No. 103, p. 798. Doc. H. due 1834, as to Maryland loan.

Mr. Siders. There never was any loss on the mail line between Chambersburg and Pittsburg—the passenger money always paid expenses; the mail contracts were profit. I speak of the mail lines only—the losses were owing to too much stock on ex. lines, as there were seasons when there was no business for them—stock on ex. lines were put in at from $1,000 to $1,200; a team of four horses and coaches--worth from $500 to $600—taken from other roads, after railroad to New York was finished, were sent out west. Extra teams not necessary for carrying mail—two lines were necessary for carrying mail by ex. I mean beyond the two lines.

J. W. Weaver. The mail line would have made money on that road; we sunk money by having too much stock on the road not necessary for carrying the mail.

Daniel Brown. The horse Shipman supposed was dead, was out of use for three or four months, but was afterwards able to work.

Juror. Horses were injured on the road—this one was in the first four days of the ex. line were by horses.

Senate Document 86, 1835, p. 227–9. Bid of R. for Pittsburg route, 26th September, 1831, route 1031.

12th November, 1841. Offer certificate of bookkeeper of Bank of Metropolis. Read. A.

3d December, 1833. E. F. Browne's check was charged to his account, $3,944 67, proceeds of R. draft on O. B. B., dated 19th October, 1833, due 25th–28th February, 1834, for $4,000. 4th December, 1833, draft carried on books of bank. Offer entire accounts of Wm. F. Barry and R. M. Johnson from 1st January, 1833.

Plaintiff closes their evidence.

FOR DEFENDANT.

Statement from Western Bank, 16th October, 1841, 4th February, 1833. This day, R.'s agent, Pogue, got a draft of $2,950 of this bank, and R. is charged with a check for same amount same day.

1st August, 1834. This day, draft of R. on O. B. B., Treasurer, endorsed by R. C. Stockton, for $10,000, was discounted at this bank, proceeds $9,835. Same day transferred from account of R. to credit of account of Post Office Department by a check of R. Same day, Post Office Department paid $20,000 to this bank, to take up R. C. Stockton's draft, then at maturity, for $20,000, due from department.

20th September, 1834. This day R. deposited in cash to credit of department, and took certificate for same, $9,843 34. No draft or note since 1st August, 1834, which was above named draft, has been

discounted for R., the avails of which were credited to him on books of bank.

31st October, 1834. This day, J. Page, postmaster, deposited to credit of department, $10,000. There was due and paid next day, from Post Office Department, R.'s draft on O. B. B., treasurer, for $20,000, which had been deposited 30th April, 1834, to pay in part the previous loan of $50,000, had by department of this bank, proceeds of which draft of $20,000 had not been credited to account of R. or department, but appears in an account called "President's Account."

17th November, 1834. This day, R. deposited to credit of Post Office Department, in cash $9,848 39.

14th February, 1834. This day, J. R. deposited to credit of Post Office Department $9,898 39.

21st April, 1834. R. deposited to credit of Post Office Department, in cash, $10,000.

28th April, 1834. This day R. deposited to credit of department, in cash $5,000. The avails of no drafts are credited in R.'s account till account was closed in this bank, since 1st August, 1834.

20th September, 1834. No. 258. R.'s check on Sch. Bank, to Post Office Department or bearer, $4,000.

28th April, 1835. Do. to Post Office Department or bearer, $1,000.

28th April, 1835. Do. to Post Office Department or bearer, $4,000.

26th September. Do. to S. L. Gouverneur, on Farmers' and Mechanics' Bank, $2,500; objected to, as they are not applied to any special item; admitted; plaintiff excepts to competency.

Present contract for mail from Philadelphia to Chamb'g, by railroad, and thence to Pittsburg, is $45,000; and increased speed only three hours.

13th November, 1841. Deposition of Silas Moore, contractor for mail from Philadelphia to Pittsburg; began 1st January, 1836, for $45,000; time, 49 hours. By railroad 158 miles, twice a day from 1836 to 1839, $18,000. Two daily mails to Chambersburg, by Y. and Hg. One daily to Pittsburg.

2d, contract for 1840.

Mr. Watson. Was agent of Camden and Amboy railroad; our contract with R. was for three mails, which we carried, beginning in 1834; there was a way-mail on this side of river. Our contract calls to commence 1st of March; don't remember how many lines at that period of year; not likely to be more than two; the great mail was very large; think our compensation was $9,000 per annum.

Now receive for same service near $30,000.

Juror. Services no heavier—there can be great increase of weight.

Defendant closes.

Plaintiff calls for R. letter book of September, 1835.

25th September, 1835. R. to S. L. Gouverneur, enclose check for $2,500 to meet your acceptance.

Mr. Tastil. Statement 20th September, 1834, R. credit $10,000

deposited; credit by book $9,843 34, ordered by O. B. B. treasurer, to credit $10,000.

31st October, 1834. R. $10,000 deposited, credit in bank book, Page $10,000, ordered by O. B. B., credit of R.

17th November, 1834. R. $10,000, deposited, credit in bank book, ordered by O. B. B. to credit of R., $10,000.

21st April, 1835. R. $10,000, credit entered in book.

30th April, 1834. To R. C. Stockton, credit for his draft, $20,000 at 3.

30th April, 1834. Do. R. for his draft at six months, dates reversed.

2d August, 1834. O. B. B. short $9,895 in W. Bank, entered in book R. C. Stockton.

30th April, 1834. The $40,000 discounted, entered on bank book of department in W. Bank of Philadelphia.

Plaintiff closes.

Charge.— Upon the foregoing proof and facts, the court charged and instructed the jury as to the course they should pursue in finding their verdict.

UNITED STATES *vs.* JAMES REESIDE.

BALDWIN charged the jury as follows:

Some preliminary questions have been raised in this case, which we will dispose of before we call its merits to your attention. These questions relate to the nature and powers of the Postmaster General, which it is contended by one of the counsel for the plaintiff are such, and such only, as belong to the heads of the other great departments of the government, all being alike under the direction of the President of the United States, as its executive power, to see that the laws be executed. As to the subordination of the other heads of departments to the President, we have nothing to say; it has been made a political question elsewhere, which will not be noticed here, unless in a case which calls for our opinion upon it as a general one. In the United States *vs.* the bank of the United States, tried at this term, we held that where an act of Congress conferred a power on the Secretary of the Treasury to do a specific act, a power of attorney from the President, authorizing and ratifying the act, gave it no additional validity, or had any effect on the act when done, or on the legal consequences resulting from it. The same principle applies to the acts of the Postmaster General, done within the powers conferred on him by the organic law of the department; his authority is derived from the legislative power of the nation, composed of the two Houses of Congress, and the President in ordinary cases, or by two-thirds of the respective Houses in case of his dissent by a veto; in either case the law has the same force, equally precluding his action contrary to, or inconsistently with, its provisions, or any supervision or control over any officer to whom definite powers are granted, and on whom specific

duties are imposed, without making him subject to the direction of the President. On the temporary establishment of the post office the Postmaster General was subject to "the direction of the President in performing the duties of his office, in making contracts for the transportation of the mail," (1 Story, 50;) but in 1810, there was "established a general post office" "under the direction of a Postmaster General," which made that officer no longer subordinate to the President, otherwise than by the power of removal.

The act of 1825, which repealed all former laws, declared "that there shall be established at the seat of the government of the United States, a general post office under the direction of a Postmaster General," repeating the words of the act of 1810, which is decisive of the question whether the President is the moving power in the action of this department. In the case of Kendall *vs.* the United States, a similar question was presented to the Supreme Court, in whose words we shall dispose of the one now before us: "This is a doctrine that cannot receive the sanction of this court. It would be vesting in the President a dispensing power, which has no countenance for its support in any part of the Constitution; and is asserting a principle, which, if carried out in it results, to all cases falling within it, would be clothing the President with a power entirely to control the legislation of Congress, and paralyze the administration of justice."—(12 Pet., 613.)

We must then take the law to be settled, that the Post Office Department is under the direction and control of the Postmaster General, in all things connected with its administration, unless the law has conferred on some other officer or tribunal, a power to supervise his conduct. What are his powers, or their limitations, we shall hereafter consider and explain to you in detail. It suffices for present purposes to say, that to whatever extent Congress have devolved upon that officer, their authority which is vested in them by the Constitution, are constitutional, and may be exercised in their plenitude, with no other control than is imposed by the law itself. We may think the power too broad to be confided to one man; that this department should be organized and administered under the same checks as the others are; but we must not forget that this was a proper subject for the consideration of the legislative power of the nation, and not for you or us. It was in their discretion to grant more or less power to the Postmaster General, they have exercised that discretion by their acts, which are rules for us.

We must not attempt to abridge his powers, merely because we think them too large, or expand them because we think them too small; our common duty is to take and act upon things as we find them, applying to his powers and action, the doctrine of the Supreme Court.

"It is an universal principle that where power or jurisdiction is delegated to any public officer or tribunal, over a subject matter, and its exercise is confided to his or their discretion, the acts so done are binding and valid, as to the subject matter, and individual rights will not be disturbed collaterally for anything done in the exercise of that discretion within the authority and power conferred. The only questions which can arise between an individual claiming a right under the

act done, and the public, and any persons denying its validity or power, in the offence and fraud in the party. All other questions are settled by the decision made, or the act done by the tribunal or officer, whether executive, legislative, judicial, or special, unless an appeal is provided for, or other revision by some appellate or supervisory tribunal is prescribed by law." 6 Pet., 729-30.

This is the broad rule by which to measure the official acts of the Postmaster General, done within his granted powers: he is agent, the trustee of the people, the nation, the United States, acting for their use and benefit; accountably criminally for wilful or corupt misdemeanors; and answerable civilly for the public money which comes to his hands. His agency is not confined to the letter of the law. The known usage of the department, not corrected or repudiated by any law, may be equivalent to a new grant of power by Congress, especially on matters officially communicated to either House, and not disapproved by resolution, or forbidden by law: the acquiescence of the legislature, in a notorious usage, having the same effect of a law where former laws are silent on the subject. This is a rule in relation to all the departments of the government, and should be more liberally extended to the usages and practice of the post office than to any other, on account of the multifarious and almost infinitely complicated transactions depending on contingencies which cannot be foreseen or provided for by any specific enactments of any law. The operations of his department cannot be suspended for an hour, without public complaint and inconvenience, yet contingencies constantly arise which require the most prompt and efficient action, without regard to expense in any case, and often without inquiring into his powers, which the public take for granted are adequate to any emergency, and hold him responsible for their plenary exercise. Hence arises the neccessity of a liberal construction of the law organizing the department, for giving the effect of a law to his usage, and the known course of the department on the particular subject. He cannot excuse any known omission of duty in any person employed in any of the concerns of the office, in any of its expanded ramifications; for the law expressly gives him the power, and enjoins on him as a duty, to give his assistants, the postmasters, and all other persons whom he shall employ, or who may be employed in any of the departments of the General Post Office, "instructions relative to their duty;" "and to superintend the business of the department in all the duties that are or may be assigned to it." His directions must have the force of a law of the department, of which the known usage is a necessary part—connected with its superintendence, the duties enjoined on the Postmaster General, require corresponding authority to perform them. Among those duties is the imperative injunction which admits of no reservation or qualification, "he shall provide for the carriage of the mail, on all post-roads that are or may be established by law, and as often as he, having regard to the productiveness thereof, and other circumstances shall think proper." What these other circumstances are, or may be, is for him to decide; but whatever they are, or whenever they arise, the mail must be carried; and he has full power to provide for it by any means not prohibited, by ordinary or special contracts, and in such terms and conditions as

in his discretion he may judge to be necessary or expedient to effect the object. Thus authorized, and thus enjoined, the Postmaster General stands in a position which no other head of a department occupies.

Congress has clothed him with their power, put him in their place, in the direction of all the officers and employees of the post office, and the superintendence of all its concerns, confiding to him the exercise of a discretionary power unknown in any other law, and withheld from any other officer. By the union of the power and duty to give directions to all persons employed in the department, their acts are, in law, his acts, presumed to be done by him, to the same effect if done personally; he was encumbered by no machinery which he could not manage under the act of 1825. In relation to the accounts of individuals, deputies, or contractors, he was the Auditor, Comptroller, and Register of the Treasury of his department, which had no connexion with treasury accounts for paying over the people's revenue, when there was any; his assistants and clerks kept the accounts; he settled them, certified balances, under his official seal; and so certified, they were admissible evidence in all suits brought by him. That he was the sole arbiter of the accounts, is evident from his having the exclusive power of bringing suits for debts and balances due the department. The suits must be in his own name, and carried on under his direction; of consequence he was the sole judge of whether a balance was due, or a suit should be brought, or prosecuted. If he did not sue, the account could not be verified by judicial power; and if he did sue, and obtain judgment in a civil case, he might discharge the defendant from imprisonment, if he had no property. Standing in this position, the Postmaster General had the same power over the accounts of his department, (except his own account with the United States,) as the secretary and the accounting officers of the other departments possessed by the union of all their powers, without any control by the President. His adjustment or settlement of an account, or an item, had the same effect as the final action of the Comptroller of the Treasury, or an account examined and certified by the auditor of a department, and transmitted to the Register of the Treasury. When he is invested with powers so plenary, the action of the Postmaster General, as the trustee of the nation, binds it as a *restia que* trust, in all cases to which his authority extends, and its exercise is not affected by the fraud of the party who claims a right resulting from it. If there is any exception to this rule by the provisions of the 43d section of the act of 1825, which authorizes a court or jury to revise an account settled, or an item allowed, it is only in the excepted cases, and for the specified causes. We cannot sanction the doctrine contended for, that we must settle controverted accounts with a view to the public interest, which it is our duty to protect; we can recognize no duty to look more to the interest of the United States than any other litigant party before us. If injustice has been been done to the United States by their authorized agent, which can only be repaired by the invasion of a private right, they must seek their remedy against their officer. If he has incurred any criminal or civil responsibility to them, it is his duty to act for their interest as his guide; but as he is made the

sole judge of that, the only question for us is, whether the individual shall be made answerable for his errors. It is always open to inquiry, whether the act done was authorized? Was it within his jurisdiction to act upon the subject matter? Was it a case in which he had a discretion to exercise? Did it bring his powers into action? If it did not, then the act is not binding on the United States; if it did, then the inquiry is, did he exercise his discretion, act from his judgment, honestly formed and applied to the subject before him, in good faith?

If he did, it matters not that his judgment was erroneous, his discretion indiscreetly exercised, his conclusions wrong, or the result injurious to the public; you cannot assume the discretionary powers which the law confided to its officer, and undo his acts, by doing what you may think he ought to have done, under the circumstances on which he acted. The powers of a court and jury are not discretionary; they must be exercised on the rights of the parties, according to the law and evidence of the case; as imperative rules for your verdict, and also judgment, your and our first and only duty is to see that justice is done to both parties, by the application of sound principles of law, and the diligent extraction from the whole evidence of the facts which bear on the subjects of controversy. When we have done this, our consciences will remain undisturbed by any self-reproach for not having been influenced by the interest of one party or the other. Were we, however, in this case to look in one aspect which it may assume, with some reference to the interest of the United States, it might not tend to prejudice the defendant, for it must be remembered that if you should find a verdict, and certify a balance in his favor, he cannot recover it by our judgment, or obtain it by any process we can issue. His only remedy is by an application to Congress, who may be disposed to look through the verdict and judgment to the grounds of their rendition. Whether they will, or ought to do so, is not for us to say; but that the same course may be taken in this case as has been in others, is possible, if not probable. At all events, it is our duty in deciding on the accounts before us, to come to no conclusion on the items which will compose a balance on the one or the other side, which is not the result of mature deliberation and judgment on every part of the case, throwing aside every consideration which arises from feeling, passion, prejudice, or a disposition to terminate our labors without such an investigation as will enable us to justify the result; so that in whose favor the cause terminates, we may, one and all, be satisfied that we diligently and faithfully acted on the principles which Congress adopted, and on which the Supreme Court have ever acted on accounts between the United States and individuals—the rules of law, the principles of equity, and the usages of the department. If, on a verdict so rendered, and not disapproved by the court, the purposes of justice are not finally accomplished, should the occasion arise for invoking future action elsewhere, no imputation can rest on you or on us.

The defendant's counsel have complained of the conduct of the Postmaster General, suspending allowances made by his predecessors, of delay in the settlement of his account, and the refusal of the Auditor to give him the information sought, to enable him to prepare for this

trial. Whether these complaints are just or not, we shall not inquire. If just, it is much to be regretted; if unjust, it is equally to be regretted that the complaint is made. Be it, however, as it may, it is no cause for withdrawing our attention from the true merits, the broad and substantial justice of the case, which consists in the fairness and legality of their mutual claims. If one or both parties have made unfounded charges, or withheld proper credits in their respective accounts, they will be corrected here, with a determination not to suffer the defendant to be injured by official oppression, if any has been exercised to his prejudice, or to avail himself of an overgrasping disposition, if it has been entertained. Mutual recriminations have been made for the not producing and suppressing books, papers, correspondence, and accounts; the defendant and the clerks of the department have been examined before you, and you must be the judges of the question of fact, whether there has been any designed suppression, spoliation, or withholding of anything in writing which, had it been produced, would have operated to the benefit of the other party. On the one hand, you will look to the defendant, his habits of life, his course of business in keeping books of accounts and correspondence, and inquire whether such a man would be likely to open and keep regular accounts of his transactions with the department. You will look to the notice for the production of papers, &c., its dates, the residence of the defendant, the account that he and Mr. Yard have given in relation to them, to what has been produced, and how produced. On the other hand you will look to the usage and pracetice of the department, as to its books, accounts, and the manner of keeping them, the applications by the defendant or his agent for papers, letters, &c., the answers given to them; the fire in the office, its effects, the search which has been made, and the account given of what was destroyed, what preserved, and what is exhibited. On taking this view, you will decide whether the parties have produced the best evidence in their power, which, under the circumstances of the case, they would be expected to produce, or whether they have designedly kept back anything which, if exhibited, would have operated against the other. The effect of the evidence on this subject upon our minds is not unfavorable to either party; we are not satisfied that there has been any such concealment or suppression of anything which either party was bound to produce, as to afford just cause of complaint; and if you are not clearly convinced to the contrary, the better course is to entertain no suspicion. The consequences of keeping back or suppressing books and papers may be very serious, for a jury may presume much which is not in evidence, and as this tends, in some measure, to lead to conclusions from opinions and conjecture merely, it is safer, in in a case of doubt, to take for granted that there has been no designed unfairness on either side in suppressing evidence which would throw more light on the case than what is before us. Should you concur in opinion with us on this subject, you will enter upon an examination of the subjects of controversy, under the conviction that the mass of testimony which has been exhibited contains all that could reasonably be expected, when due consideration is given to all the circumstances on which the parties stand.

There has been much discussion at the bar on a very important question—on whom is the duty devolved of keeping and rendering an account of the drafts by R. on the department, accepted by it, and negotiated; the terms of the negotiation, the proceeds, and their application? The counsel of each party have endeavored to fasten this duty on the other. So far as this is matter of law, it is our duty to decide it; but if any matters of fact are involved, you must decide them before we can apply the rules of law and evidence which are fixed when a state of facts is definite, but are moulded according to the circumstances which attend the transaction, and varied so as to meet the varied aspects which a case may assume.

That it was the duty of the Postmaster General to open and carry on an account with each contractor, for the transportation of the mail, is too clear to be doubted; that such account should contain a full statement of all moneys paid to contractors, in whatever mode the payment was made, for services rendered under contracts of every description, connected with, or incident to, the conveyance of the mails, is equally clear, as a duty from the performance of which there can be no exemption. It is also as clear that the Postmaster General is bound to keep and to render an account of all the receipts and expenditures in, and of the department, from whatever source derived, and on whatever object expended.

If he accepts the draft of a contractor absolutely, the United States is bound to pay it to the holder to the same extent, and on the same principle, which apply to a bill of exchange drawn on and accepted by a private person. So the Supreme Court have settled the law in 15 Pet. 390; and on their authority we here so declare it at this term. If he accepts a contractor's draft, on condition that he performs his contract service, the United States is bound to pay it if the service and conditions are performed, the amount of which is an item of debit to the contractor, and credit to the Postmaster General in the account which he must render to the treasury. If he accepts a draft from a contractor purporting to be an account of transportation, when it was intended to apply the proceeds to the use of the department, and they were so applied, the United States are equally bound to pay the amount to the person who negotiates or holds it in the course of business, as if the draft was in fact what its form purported. If loans are negotiated with a bank, or otherwise, for the use of the department, the proceeds must be carried to the credit of the lender, and the debit of the department, or person to or for whom it is paid; so that whatever shape the transaction may assume, or to whatever purpose it may relate, it must go into account of debit and credit to the proper parties, and under the appropriate head of accounts.

A draft on the Postmaster General is a bill of exchange as held by the Supreme Court; when accepted, he is the debtor to whom the holder must first look for payment; the drawer is only an endorser when this bill is negotiated by a bank; the faith and funds of the United States are in pledge for its payment, and the amount may be charged to the Treasurer of the United States in his account with the bank, as the Supreme Court have decided in relation to the four lost drafts charged to the defendant in the printed account of the plaintiff.

The debt is contracted by the acceptance, though not payable till maturity: if given for the use of the contractor, it is chargeable, and ought to be charged to him, before it goes into market otherwise the books and accounts of the department will not exhibit the true state of debts contracted or paid: if intended for the use of the department, and so applied, it should be debtor to the bill, and credit by the payment of expenses, but is not chargeable to the drawer.

These consideration seem conclusive to show that every transaction of these descriptions ought to be entered in account at the time they take place, as the essential materials for the stating, rendition and settling the accounts of the Postmaster General with the United States, as their official agent and trustee; and if this duty had been performed, the same items which entered into the public account, would necessarily compose the account of the contractor, or other person to whom they related. As between the Postmaster General and the United States, there can be no doubt of his duty. The next question is, what is his duty when he employs a contractor, or other person, as an agent for negotiating drafts accepted by the department, drawn by the contractor, and negotiated for its use by him or others—in other words, on which is the duty of keeping and rendering an account imposed. One thing is certain, if the duty to the United States in keeping a correct account of receipts and expenditures in the General Post Office, is faithfully performed, there is no necessity for any other account, in order to ascertain how the contractors or the department, or its agents stand as debtor or creditor on balances. Acceptances as Postmaster General, are on their face official acts within his own knowledge, or that of the officer whom he authorizes to accept for him; the destination and application are equally known, whereby there are ample means of keeping true accounts of all transactions in the office as they occur, arising on contract or agency.

It is true that the agent has equal means of knowledge of such transactions as were confided exclusively to him; but as it appears that as Mr. Bates, Mr. Gouverneur, Mr. Bibby, Mr. Hamilton, Mr. Green, and others, were employed by the department to negotiate its acceptances of R. drafts to large amounts; as large loans were negotiated with banks, on what paper or other security we know not, except in a few cases; we cannot say that it was the defendant's duty to keep and render an account of all his drafts on the department.

It seems that he and the other agents acted jointly in many batches of drafts; and it is difficult, if not impossible, for us to ascertain who received the money upon them, or their definite application of the proceeds, as they came to hand. The same difficulty prevailed in the department. We find that Mr. Gouverneur was charged with the $15,334 drafts which compose the debit items No. 466 to 473; and were not charged to R. till July, 1839, after the termination of the suit between the United States and Mr. G.; and we find Mr. Kendall, in his letter of May, 1836, to Mr. R., asking for information as to another batch of $25,500. Under such circumstances, it would be injustice to R. to hold him accountable for all his accepted drafts; and of consequence, equally so, to make it his duty to keep the general account of debit and credit on such transactions, in many of which

his name was only used, as in the $50,000 batch sent by Mr. Brown to N. Gosh, for negotiaton and were not negotiated by R. himself.

Had it been the usage of the department to require from its agents employed in these transactions, an account of their agency; had they been informed that this was expected of them, each for himself, as to the part he took; or had R. possessed a full knowledge of the confidential communications of the Postmaster General and chief clerk, with all the persons to whom they entrusted the negotiation of these drafts, it might alter the case, and justify us in holding him to a stricter accountability than would be just in the actual position of the case. We are not informed, by any evidence, whether Mr. Bates or Mr. Hamilton were required to, or did render any account; or that Mr. G. had, or was in any way required, to keep any other than an account as postmaster, in which his receipts for postages and the proceeds of the drafts of R., negotiated by him, were mixed with each other. One fact appears in his evidence, which shows the position in which R. would have stood, had he been held accountable, in the first instance, for the $40,000 Hamilton's drafts, the nett proceeds of which were less than $35,000; and the $35,000 batch which were negotiated at two per cent. a month, and bound to account for the application of the whole $75,000 thus diminished by usury. So far as we can learn, the usage of the department was the same in the case of R. as with all others who were connected with it on kindred subjects: the accounts of postmasters and contractors, who were also its agents, were kept under one head; none appear to have been opened with persons employed merely to negotiate drafts and it is admitted that the usage was, not to carry them into account till they were paid, and which also appears by the accounts themselves. Taking into consideration these and other considerations arising on the evidence which we shall not detail, but which all tend to the same result, a state of things is presented, which, in our opinion, make it the duty of the department to keep the whole account between them and R., both as contractor and agent. Had that been done, the proceeds of the drafts would appear by the receipts of money in the office, or in the banks with whom the defendant kept an account, or money in the hands of agents with whom they corresponded; for the balance, R. would be properly accountable, and if he kept no account, must have submitted to the charge till he could disprove it. When they blend what ought to be separated, when their public duty is to truly state and account for all receipts for moneys from whatever source derived; and they do not require a distinct account of an agency which they created under the circumstances of this case, R. is no more bound to keep and render an account of the money which comes to his hands as an agent, than what he receives as contractor. The department has better means of information than he can have; and any account which he could keep and render, could give the department no better or certain knowledge than they must possess without his account, if theirs were property kept.

In coming to this conclusion, we must be understood as confining it to the whole account of agency on the part of R. When we come to particular items, the rule becomes plastic, to be so shaped as to

conform to the existing facts which bear upon it; what are facts, you must decide. When a witness states a fact, we must take it as true; whether the witness is credible, or ought to be credited, is exclusively for you. The rules which apply to, and govern private agencies, cannot be applied to this case, which is an anomalous one, and cannot happen between individuals, unless in some special cases appearing on these accounts, which assume an official character, either because they state official transactions, or those done under color of official authority, which we find by the reports of the Postmaster General to the committees of Congress, he asserted to extend to loans for the use of department.

To a case so circumstanced in all its ramifications, we can apply none other than the rule which arises from, and must govern it, without resorting to the principles which prevail between principal and agent in the common transactions of life: a peculiar case must be governed by peculiar rules, arising from and adapted to it. Much has been said about books and accounts of the department, which have been exhibited and explained at the trial; they have been assailed for many causes; but so far as they were kept, and statements made from them, we see no reason to doubt their accuracy. They are defective at least in two particulars; in not containing an account of bills payable, and loans; and in not charging drafts when accepted, as is well illustrated in the last items in the account No. 474 to 477, which were not charged till 1841. The consequence whereof, is, that neither the account of the Post Office with the United States or the defendant could be settled while those items remained open. Another defect in these accounts, consists in this: that the charges for payment to R. as a contractor, and as a special agent, were blended in the debit, and separated only on the credit side of his account.

This was done by the clerk who kept the accounts, not from any documentary official statement or list given to him as his guide, or any specific directions from his superiors in the office, but from his opinion and best judgment on the very limited information he possessed, of the actual application of the money realized by the drafts, which was but partial, as the agency transactions were confidential between the Postmaster General, his agents and clerk at the head of the department of finance, to which the pay clerk was not privy, or the Assistant Postmaster General. In this state of things, it was extremely difficult to avoid complication, uncertainty, and confusion, in accounts of separate distinct transactions utterly foreign to the transportation of the mails; for when an account begins with errors, they must thicken in its progress, and prevent the reaching of correct results, which are the main source of the difficulties that now embarrass us.

By opening a single account of bills payable, and as they were accepted, placing them to the account of J. R., contractor, when they were on account of transportation, and as agent for the department, when they were for its own use, according to the directions of the officer who had official knowledge of the nature of each transaction, the result would have been satisfactory. That it is not so, is, in our opinion, not imputable to Mr. Suter, who kept the accounts; it was

the fault of the head of the department, in not directing that proper accounts should be opened and kept, and of the principal clerk in the associate bureau of the office, that he did not direct the proper entries. So far from thinking Mr. Suter deserving censure, we rather award him praise for the manner in which he kept the accounts, when we take into view the materials from which, under the defective forms and practice of the office, he was compelled to compose it.

The item of $225 27, on which some comment has been made, seems to be correct in all respects; it was for a draft of the agent of Mr. R. to that amount, properly charged to his account; the excess of the debit over the corresponding credit, was owing to an error in the draft which Mr. Suter could not correct in the entry, that should agree with the draft; we think it proper also, to say that his explanations of the account during the trial, have been intelligent, candid, and satisfactory, to us, at least. And while on this subject, we feel it to be but an act of justice to express our opinion, that, in the examination of the other officers and clerks attached to the department, during the progress of this trial, they have evinced a disposition to give all the information sought from them, fully, fairly, and in all respects in a manner creditable to themselves and deserving our confidence.

But an inspection of the accounts before us, with all the explanation we have heard, leave us still involved in the same difficulty of extracting from them correct results as prevailed in the department from 1834, till the final adjustment by the Auditor in September last, as appears by the official accounts and reports made to the two Houses of Congress pursuant to calls on the department by their committees, which will deserve some notice hereafter. And if the officers of the department were thus in doubt, while all the papers relating to the accounts were preserved and accessible, it cannot be expected that there can be more certainty in ascertaining the true state of accounts between the department and R., five years after the destruction by fire of every draft accepted while Mr. Barry was in office, since June, 1832. It would be equally unfair to hold the United States accountable for this destruction of papers, which we must attribute to an accident, and without clear proof ought not for a moment to entertain the impression that it was by design, or to hold R. to the production of any paper or evidence in relation to his accounts, which he was not only bound to preserve, but was bound to surrender when he was credited in account for the claim in support of which he produced what was deemed satisfactory proof at the time.

The only obligation on the United States which the accidental destrucion of papers imposes, is, that if they rely for the support of their claim on lost papers, they must give the best secondary evidence in their power of their existence and contents, proof of an accident, a proper search, and that the papers cannot be found; this suffices for the admission of secondary evidence; if competent in law, the jury are the judges of sufficiency for those purposes.

As to the defendant, he stands in a different position on the settled principle of the law, which not only presumes that all public officers perform their official duties with fidelity, but also makes this presump-

tion in favor of his, acts which relate to the rights of individuals. "And when an act is to be done upon evidence and proofs to be laid before a public officer upon which he is to decide, the fact that he has done the act is *prima facie* evidence that the proofs were regularly made and were satisfactory. No other tribunal is at liberty to re-examine or controvert the sufficiency of such pooof, if laid before him, when the law has made such officer the judge of their sufficiency and competency." 14 Pet., 458.

This principle is peculiarly applicable to the acts of the Postmaster General and all the officers in his department, because more is confided to his judgment and discretion than any other public officer. Till 1836, the checks which were put on other officers were not put on him so, that when the transactions which took place in relation to the present controversy, passed under his supervision, there was no tribunal competent to revise or review his acts, unless on a suit by the United States, nor then on any matter which was within his discretionary powers on which he had decided against them, without fraud in the individual. Hence an individual stands unaffected by the loss of any paper which bears on an allowed credit in his account; the fact that it was made is all he need show, and the United States cannot afterwards reverse the credit by proof, that it was given without proof. This rule prevails when the papers are prepared and produced at the trial, and though we should think them insufficient to support the credit, it would not avail the United States on any item which had passed into judgment by the Postmaster General against them; they having made him the judge between them and a contractor, the decision in his favor is final, though not so if against him and the United States sue. While, therefore, the United States are not to suffer by an accidental loss of papers, they are not to benefit by it, or in any way to change his position to his prejudice; any other principle applied to this case would throw it into utter confusion. There is one circumstance in relation to the most important of these lost papers—the drafts of R. on the department, which it is alleged by the defendant and proved by the oath of Mr. Brown, to have indicated by the form of the acceptance, the use to which they were destined and applied, whether they were for R. or the use of the department. The fact is denied by one of the counsel of the plaintiff, that the form of the acceptance denoted the purpose of the drafts, and it is said that no credit is due to the evidence of Mr. Brown on account of his fraudulent collusion with R., while he was at the head of the contract and finance branch of the department, and also because he is contradicted by other witnesses. This is making a serious and solemn issue of fact for your decision, when you look to Mr. Brown's private and professional station in society, connected with his official connexions with the Postmaster General, as his chief clerk and confidential agent in the pecuniary concerns of the department. If his evidence is unworthy of credence, what becomes of the credit of the books and accounts of the department kept and carried on under his directions, and what becomes of the official acts of the Postmaster General, if the allegation is true, that prior to March 1833, Mr. Brown was the acting, directing and moving power of the whole contract machinery, and from that time till February, 1835, of the finances we are not prepared to say. Should

you withhold your belief in his testimony on the ground contended, it would place this cause into a state of uncertainty, which might put it out of your or our power to effect justice between the parties. The usage of the department as to the form of the acceptance does not appear to have been uniform, or to have been well understood by its officers. In a letter of Mr. Kendall to the cashier of the Bank of Metropolis, (Rush 31,) he states under date of November 1837, when he had been two years and six months at the head of the department, that he accepted no drafts except "to renew acceptances before issued by authority of his predecessor, changed the form of acceptances before used, and adopted that which appeared on R. drafts." "Accepted on condition that his contract be complied with A. K." In the case of the United States *vs.* Bank of Metropolis, Mr. Mason testified that while he was treasurer he gave absolute acceptances when the amount was due as a general rule, that he gave such an acceptance on one of the drafts in controversy in that case, on ascertaining that though nothing was then due, there would be enough due to meet the draft when at maturity, and entered on the draft, "Noted." He also proved that occassionly, and with the special approbation of the Postmaster General, acceptances were given on the faith of existing contracts, conditional on their performance, before Mr. Kendall came into the office.

In that case Mr. Mason testified that these two descriptions of drafts had been for some years discounted at the banks of Washington and elsewhere, sometimes for the accommodation of the department, sometimes for the drawer, sometimes for both. In this he stated the same thing in substance as to the form of acceptance, that an absolute one was for money actually due, which the department could not otherwise pay, and conditional, when for money to fall due at the end of the quarter. His evidence, however, related more to his own practice than to the former usages of the office, which is apparent from his objections to accepting the conditional ones till the Postmaster General gave instructions to accept them; he neither takes any notice of a third description of drafts, those drawn for the use of the department, nor appears to have had any knowledge of them; he states that he knew only of the two kinds, yet it is admitted and clearly proved that there were many of the third class drawn, accepted, and negotiated for the use of the department. The drafts on the department in the time of Judge McLean, in 1828, show the then existing usage. One in June is—"Accepted, A. Bradley, Assistant Postmaster General;" another in July—"This bill shall be paid at maturity, if the mail be punctually carried, J. McLean, Postmaster General;" one in November—"Accepted, payable on condition that the mail is duly carried to time, according to contract with the drawer, A. Bradley, A. P. M. G.;" "There can be no risk in discounting this, J. McLean;" a fourth—"Payable on condition the drawer performs his contract for carrying the mail to time, A. Bradley, A. P. M. G.;" "This bill may be safely discounted, J. McLean." None of these drafts purport to be on account of transportation, but simply on account "J. Reeside." The form adopted by Mr. Barry, to have all drafts on account

of transportation, was better calculated to facilitate their negotiation than that in use in 1828; and if Mr. Brown states truly, that the acceptance was unconditional when it was for the use of the department, it would give them a better currency in the market than a conditional acceptance by an assistant, and a declaration by the Postmaster General that the draft might be safely discounted.

With this varying usage in the department in evidence, and from the knowledge which Mr. Brown had in consequence of the confidential relation between him and Mr. Barry, his long experience in the office, and the acceptances being made by himself for the Postmaster General, the whole subject was better understood by him than it could be by Mr. Mason, who was in the office as treasurer only about two months. You will take these and all other circumstances which bear on the credibility of Mr. Brown into consideration and decide on it according to your best judgment. For ourselves, we feel it our duty to say, that stronger circumstances must appear than have been given in evidence, before we could discredit entirely a confidential officer in one of the departments of the government, and, indirectly, the high functionary at its head, both of whom are invested with its most important concerns.

We now come to consider the powers of the Postmaster General more in detail than heretofore.

1825, sect. A General Post Office, established under direction of a Postmaster General. To appoint assistants, clerks, as many as required, and postmasters at places he may deem expedient, and establish post offices. Shall give all persons employed in the department instructions relative to their duties, provide for carrying the mail as often as he may think proper, obtain accounts from postmasters once in three months or oftener, pay all expenses in conducting post office, carrying mail, and all other expenses, and management of the General Post Office, and prosecute offenses against the establishment; render quarterly accounts to the Secretary of the Treasury of his receipts and expenses in the department, to be settled and adjusted as other public accounts; superintend the business of the department in all duties assigned to it.

Sec. 5. Authorized to contract for carrying the mail in steamboats, not exceeding three cents a letter and one half cent for newspapers.

11. Make contracts for carrying mail.

14. Allowance to postmasters.

20. Deputy postmasters and other agents of Postmaster General, shall account and answer to him for all way letters, &c.

31. Postmasters neglecting to render accounts and pay over to the Postmaster General their balances, he shall bring suit in his own name, and so (44, 33, 32,) for not rendering their accounts or entering into contracts.

41. Emoluments of postmasters over $2,000 to be paid over to Postmaster General, to be accounted for as other moneys received by him.

Sec. 7. *Restrictions.*—None but a free white person shall carry the mail.

10. To advertise for contracts twelve weeks, and not to make them

more than for four years, and lodge a duplicate with the proposals with the Comptroller.

14. Commissions to postmasters limited, not exceeding $2,000 per annum.

43. Prohibits additional allowances in certain cases, to report such as are made with an account of additional services and compensation, to be made to the Comptroller.

1808, 2d Story, 1092. To report all contracts by Congress.

1823. To make no advance of public money in any case, nor to pay any sum exceeding the value of service rendered under a contract. The effect of these broad powers and narrow restrictions is plain.

Fines, etc., Act of 1825.

Sec. 2. All persons employed in conveyance of mail shall be subject to same penalties and forfeitures for violating the injunctions or neglecting the duties required by law.

Sec. 6. Master of steamboat to pay thirty dollars for not delivering a letter, and ten dollars by every person who don't deliver letters, etc., to master.

Sec. 7. Contractors to pay twenty dollars for employing any other than whites.

Sec. 32. Penalties on postmasters who do not render their accounts of double value of postages, and if no account, such sum as the court and jury shall estimate.

Sec. 38. All pecuniary penalties and forfeitures incurred under this act, go half to informer, half to United States, and accounted for as other moneys, and prosecuting for the same.

Sec. 44. If a person whose bid is accepted, fails to give bond with sureties to perform the contract in the [vide sec. 27] time required by the Postmaster General, he shall [act of 1836] forfeit and pay so much as is the difference between the old and new contract for the same service, which may be recovered by Postmaster General by action on the case.

1836, sec. 14. Auditor superintend collection of debts and all penalties imposed on postmasters.

Sec. 12. Accounts of post office so kept as to exhibit the amount of revenue from fines.

Sec. 13. Suits for balances or debts, or for any fines, penalties, or forfeitures imposed by law respecting Post Office Department, or by the Postmaster General pursuant thereto, shall be in name of United States, and the demands in such suits shall have all the privileges and priorities in adjudication and payment as other claims of the United States by existing laws.

1825, sec. 28. Court shall proceed to trial and render judgment the first term, &c.

The instructions of the Postmaster General to his deputies having the force of laws, their reports to him pursuant thereto are official acts, and a *prima facie* evidence of the fact of the failure by contractors, and a legal ground on which he may impose fines and penalties.

By this law the Postmaster General represents the United States in

the Post Office Department, and is clothed with all their powers which are not prohibited to his exercise, so he has been recognized by Congress, who have never annulled or repudiated an act he has done; the funds of the department were at his disposal, they did not go into the treasury, he paid expenses by his own order, without any check, except that he has bound to apply it to the service of the department, not to pay it in advance, or beyond the service performed under contract. Yet even this express prohibition does not apply to the acceptance of the drafts of contractors, made in anticipation of money arising on contracts, for services to be performed as held by the Supreme Court in United States *vs.* Bank of the Metropolis, where such acceptances are conformable to the usage of the department and the terms of the contract. But this decision would not embrace acceptances not made in contemplation of, or with reference to contract services, or made for sums beyond what would be due for the time on which they were drawn; such drafts may not be contrary to law, they may be valid contracts, binding on the drawer to account, and the acceptor to pay, though not authorized as official accounts.

The duty of the Postmaster General to advertise for contracts twelve weeks, and to limit them to four years, does not prevent him to make special contracts for a time, within this limitation, for extra or express mails, or services of any description concerning transportation; or from altering or modifying existing contracts, as has been the uniform usage of the department since its establishment; and the terms and conditions of contracts are exclusively confided to him. He had the sole direction of suits; was the judge of cases where they should be brought; the arbiter between the United States and individuals; he must construe contracts in order to ascertain the service to be paid, in order to adjust accounts, settle balances, and liquidate debts, fines, penalties, and superintend their payment; all this was properly left to him, for none others had the same full knowledge of the various and complicated matters which bear upon contracts, and entered into the accounts of the department. Taking the organization of the department under the act of 1825, we find there was no auditor, treasurer, or any officer on whom any duties were specially devolved; the whole machinery was under his direction, as assistants and clerk.

There was no department of accounts for auditor [sec. 1] of finance for a treasurer, or an assistant as to contracts, other than what he created and assigned as he pleased, this or that duty at will.

Sec. 20. The deputy postmasters were his agents, and accounted to the Postmaster General. He received all money due the department, sued for it in his [sec. 31] own name, by direction of law, as he could so sue [12, 14, 146] before this act, and receive the money which never went into the treasury. He shall pay all expenses, &c.; bonds and contracts were in his name. Shall render a quarterly account of his receipts and expenses, to be adjusted and settled as other public accounts, which is prescribed [3d Story, 1791] by the act of 1820, which provides that: "If any officer who shall have received the public money before it is paid into the treasury of the United States, shall fail to render his account, or pay over the same, in the manner and in the time required by law, it shall be the duty of the Comptroller

to cause to be stated the account of such officer, exhibiting truly the amount due the United States, and certify the same." This law embraced the Postmaster General in 1825; he received the money of the United States as their agent and was, like all other agents, accountable for the excess of receipts over expenditures.

The duty of the Comptroller was to ascertain the balance in his hands, as in cases of collectors and receivers; but with this difference, that he could not interfere with the supervision of the business of the department, which was devolved expressly on the Postmaster General, without limitation or appeal to any officer. He could examine, adjust, and settle his account; but not his conduct, or review his contracts or actual payments, for any purpose to which his authority extended. His accounts were to be reported to the Secretary, not to the Comptroller of the Treasury, who was merely the accounting officer; not to supervise the conduct of the Postmaster General; to control him in the exercise of his discretionary power, by substituting his own discretion, and assuming his powers—no law gave him this power, or has given it to any tribunal, except in specific cases and contracts.

3d Story, 16, 30, sec. 4. By the act of 1817, the fifth Auditor received the accounts relating to the General Post Office, examined and certified the balance, and transmitted the accounts with the vouchers and certificate to the Comptroller for his decision thereon; but neither of these officers had any authority to look through the accounts to the authority of the Postmaster General as a verifying tribunal.

Sec. 8. The Comptroller shall examine these accounts, and certify the balance to the register; and by the act of 1797, the transcript certified by the register is evidence. But it is evident that the accounts of postmasters and contractors do not come within these laws; they can only apply to the accounts of the department in relation to the Postmaster General as a public officer; for by the 31st section of the act of 1825, certified statements under the seal of the General Post Office of the accounts of postmasters and contractors, after they have been examined and adjusted at that office, shall be received as evidence in all suits. Besides, by the 10th section of act 1817, the Comptroller is to superintend all suits for debts due the United States; but by the act of 1825, the Postmaster General directs all suits *vs.* postmasters and contractors. The Comptroller was to see that the money received had been and was applied to the service of the department, and the balance paid into the treasury, or to bring suit under the acts of 1817 and 1820.

In no other way can the act of 1825 be made to harmonize with these laws; and the 14th, 15th, and 16th sections of the act of 1836, are equally decisive that the settlement of postmasters' and contractors' accounts are exclusively made the jurisdiction of the Auditor of the Post Office Department, subject only to an appeal by the Postmaster General or the party. Whatever powers there were devolved on the Postmaster General, by the act of 1825, remained with him, without any power, in any accounting office, to review his official conduct, otherwise than by ascertaining whether he owed a balance to the United States, according to the decision of the Comptroller.

No powers are devolved on him by the only part of the law of 1825, which refers to him—the 43d—the additional allowances are to be reported to him; but not for any other action upon them than to enable him to state and adjust and settle the account of the Postmaster General.

15. Pet. 401. A revision of such allowances can be only by a judicial tribunal, as a judicial question, on a suit by the Postmaster General against the party in whose favor an illegal allowance has been made; consequently it is not within the jurisdiction of the Comptroller in settling his account as a receiving and disbursing officer. The act of 1836 makes a radical change as to accounts.

Sec. 1. The revenues of Post Office Department and debts due to it, shall be paid by direction of the Postmaster General into the treasury of the United States.

2. He shall submit to Congress estimates of money expected to be required for the service of the department, under the heads of transportation of [read] the mails, &c., and the amounts expended under each head.

3. The aggregate sum required shall be appropriated—all receipts of money shall be to the credit of such appropriation.

4. The expenses shall be paid by the treasurer—Sect. 5, who shall give receipts therefor—6, and pay on the warrants of the Postmaster General—7, and render quartely account of receipts and payments, to the Auditor of the Post Office Department, and send copies to Congress.

8. The President, &c., shall appoint an Auditor to receive all accounts arising in the department; audit and settle them; and certify balances to the Postmaster General, who or the party may appeal within twelve months, to the Comptroller, whose decision shall be final and conclusive. Auditor shall report the forms of papers, and the manner and form of keeping and stating accounts, (9 and Postmaster General to decide them.)

Read, 2446. Certain other duties under direction of Secretary of the Treasury.

Read, Sect. 9. Duties of Postmaster General defined, and an important provision. To control according to law, and subject to the settlement by the Auditor, &c.,

Sect. 11. Postmaster General shall in sixty days deposit duplicates of all contracts with Auditor.

12. Accounts shall be so kept as to exhibit the revenues and expenses of the department under [read] the following heads.

13. Bonds and contracts shall hereafter be taken to and with the United States; and all suits be in their name.

Read 14. Auditor shall superintend the collection of all debts, and direct suits.

16. The attorneys of the United States, in the prosecution of suits, shall obey the directions of the Auditor.

Read, 17. But the Postmaster General's duty is to bring suits to recover back money.

18. The Auditor shall adjust and settle all balances due from postmasters *on account of transactions prior to* 1*st July* 1836, &c.; and

where proceedings for these or *any other balances* due on account of the Post Office Department are fruitless, &c.

Auditor shall report to Postmaster General, and he to Congress, balances and debts due by late postmasters.

Read, 22. Postmasters General shall annually report to Congress severally, &c.

23. Duty of Postmaster General as to contracts, compensation or combination bids prohibited.

Additional compensation for additional regular service, shall exceed, &c. Nor extra allowance for increased expedition, unless additional stock and extra property.

When extra service ordered, how entered and paid for.

24. Contracts to the lowest bidder.

25. To record offers for contracts.

27. Bidders, after acceptance of their offers, shall give bonds, &c.

28. No contract shall knowingly be given to any who combine, &c.

29. No pay shall be received till contract is executed; nor payment made for any additional regular service in the transportation of mail, unless in obedience to a prior legal order of the Postmaster General.

33. President to appoint postmasters who receive $1,000 a year.

These provisions created a new organization of the department, by which the power of the Postmaster General, and the whole system of accounts was changed, especially as to the powers of the Auditor, who was made a check on the Postmaster General—whereas by the act of 1825, he was a mere clerk, appointed and removable by the Postmaster General, and directed by him. It also prescribed new rules as to contracts, which did not exist before; and in many other respects made alterations which do not bear on the controversy in this case, and need not be noticed.

Generally viewed, the act of 1836 refers to the future action of the Post Office Department, not to operate or the past transactions.

Laws are construed so as to operate as new rules to govern cases which arise under it not to alter the law which existed, when past transactions took place: they are governed by the law in force when they happened, unless otherwise intended. Retrospective legislation is odious and generally unjust, where it professes to act on vested rights or existing contracts; but is not for that reason alone unconstitutional, unless it impairs the obligations of a contract, which is prohibited to a State by the Constitution of the United States, and not granted to Congress by any of its provisions. A law is never construed to be retrospective, unless it is so in terms, or the intention to make it so appears by necessary implication, to give it the operation intended; to ascertain which, we must look to the old law, the mischief designed to be remedied, and the remedy prescribed by the new law. This takes us back to the history of the times for the state of things which caused the adoption of the act of 1836, as in some measure a key to unlock the intentions of Congress.

In 1828, the expenses exceeded the revenues $25,000; in 1829, $75,000, and ever since the embarrassments have continued, and yet exist and must continue. In 1832, new routes cost $125,000; annually increased, and few discontinued; mails more frequent—in less

time—prices higher—postage the same in rate, and amount does not increase in proportion to expense of transportation. No part of the country is willing to give up mail facilities; never submit to retrenchments; the mail never goes fast enough—people do not travel fast enough; always complain of mails and the Postmaster General. No one looks to state of department: Postmaster General is responsible for everything. He finds debts increasing by increased service, and disproportioned to the revenue. By new routes, extending franking privilege from sixty to three hundred and sixty-five days, add loss $100,000 dr. to expenses, and cut off revenue; but leave the department to shift for itself. Appropriate no money when required by Postmaster General, as in other departments, whose expenses exceed not only their means but often their powers.

In addition, the Postmaster General in 1829 was unfortunately made a member of the Cabinet, and of necessity a party man, with any diminution of his power or patronage in expending 2,000,000 or 3,000,000 dollars in a year. Hence, his conduct was put down to political account in the papers, in debates and reports in Congress, and mere matters of contracts—mail facilities; and settlement of accounts were made party questions in the reports of the most innocent transactions; *e. g.* the journey of Mr. Bates and Greene from Washington to Boston, in 1833. *Vide* Report by Mr. Ewing and Mr. Grundy.

You have heard from the witnesses the increase in the weight of mails, of newspapers, and pamphlets in 1832, when the new contracts took effect, on the route from Philadelphia to Pittsburg, and from Baltimore to Wheeling; in 1832 bank veto, Presidential election; 1833, removal of deposits; the South Carolina doctrines, tariff and compromise acts; 1834, panic, attack, &c., of the bank, currency bills, regulations of value of gold, &c., &c.; in 1835–6, preparing for another Presidential election. In such a state of excitement, the mails were overloaded; public anxiety called for new services from contractors; Postmaster General could not refuse—new contracts were made; extra allowance in every shape; expense increasing; revenue insufficient and troubles thickening—Postmaster General did what individuals do when the balance of the profit and loss account is on the wrong side, and increasing every quarter—he asked Congress for a loan of $450,000 for one, two, and three years; it was not granted—was obliged to continue his drafts on time; negotiate them as he could—renewed them with discounts—interest, usury—commission in a rapidly increasing accumulation—beyond the revenue accrueing. He could not, like a failing man, commute with his creditors, or resort to the insolvent act—he could not, dare not, stop the mails—he must keep up transportation, and pay as he could. Congress gave no relief; but increased the embarrassments by the investigation of 1834–5, ending in no action—counter reports of committees; the majority censuring him; the minority defending him. But no law until 1836, and then no aid to the *department*, except for the pay of officers and clerks, to amount of about $134,000, mostly required to carry into effect the new organization of the department. With this state of things before them, the action of Congress must be referred to it, to show what alleged abuses they meant to correct by the act of 1836;

how they were corrected by it, and by what means, whether by any new powers conferred on the Auditor, or Postmaster General, or by suit.

Sec. 14, 1. Auditor to attend to the collection of all debts, penalties, forfeitures; to direct suits and legal proceedings, and such measures as shall be authorized by law to enforce payment of all moneys due the department.

16. The Attorney of the United States shall obey his directions in suits, &c.

18. He may adjust and settle all balances due from postmasters on account of transactions prior to the 1st July, 1836.

These are new powers; the first transferred from Postmaster General to Auditor. The second is confined to postmasters' accounts; and by all sound rules of construing laws, does not embrace contractors' accounts. The Auditor has therefore no power, under this law to go into the accounts of contractors on transactions before the 1st of July, 1836.

Such are the words—the meaning of the law—as is apparent in the *next* sentence, which embraces contractors' accounts, by the words "*these* or any *other balances*," to recover them by suits in chancery, but not to re-examine them.

Sec. 17. Imposes no duty or confers any power on Auditor: a duty is imposed on the Postmaster General; but no pow is given to him to review the acts of his predecessor, or acts on the accounts of a contractor in any way, otherwise than by bringing a suit to recover back money paid to a contractor, in any of the specified cases; he cannot interfere with suits for any other debts or balances due the department which pertain exclusively to the Auditor; nor can the Auditor interfere with such a suit, which is as exclusively under the direction of the Postmaster General. The two subjects are thus separated by the law, and in strictness there should have been separate suits; but as we have held, in an early stage of the cause, that under the circumstances of this case, they may be embraced in this action, you will so act upon them, and though the words of the law refer only to a case where money is actully paid out, you will inquire whether the United States have made out a fair charge, under any head, in this section.

From this analysis and review of the acts of 1825 and 1836, the result is plain that any action by the Auditor of the department in 1839, or in 1841, on the subjects referred to in the 43d section of the first, and the 17th section of the latter act, is a mere assumption of power, without any warrant or authority of law; so is any action by the late Postmaster General in any other way than by directing a suit.

You will consequently consider that the allowances made by Mr. Barry stand unimpaired: by anything done by either of these officers, since the 29th April, 1835; any subsequent revision of these items in the department, is a void act, and the legality of those allowances is to be tested exclusively by the state of things when they were made, as if they had never been suspended or disallowed or touched before this trial. You will also consider that any attempt of the Auditors to re-adjust and settle the accounts of contractors, arising on transactions prior to the passage of the act of 1836, is wholly unauthorized, so far as they had been previously adjusted by the authority of the

Postmaster General, under the act of 1825—their authority is confined to transactions relating to an open account on items which had not been decided on. (Query even as to that.)

There can be no better evidence of the intention of Congress to make the settlement of an account in the department a bar to any future action upon it by any of its officers than the 31st section of the act of 1825, which makes a certified statement thereof under its seal, after the account has been examined and adjusted—evidence in all suits brought by the Postmaster General.

To make such statement evidence required no action by an Auditor of the office. There was none till 1836 in any other respect than by assigning to an assitant or clerk the appropriate duties of an Auditor. But he was bound by the directions of the Postmaster General; and any settlement or adjustment was, in law, the act of that officer who alone could decide upon it; for it cannot be that a statement from the Post Office Department would be evidence, if the Fifth Auditor and Comptroller were to adjust the account, and the Register to certify it under the acts of 1787 and 1817.

Independent of these considerations, there is another which arises on act of Congress, passed on the same day as the general act of 1836, for the relief of Stockton and Stokes, and Moore, mail contrators on the routes from Baltimore to Philadelphia and Wheeling, on their petion to Congress, complaining of the suspension by Mr. Kendall of allowances made to them by Mr. Barry as illegal, and of his consequent stoppage of their regular pay under contracts. In their petition they refer specially to one claim, and to papers and documents which explain the others. The claim specified is very analogous to one made in this case for extra pay on account of the increased weight of the mail between Philadelphia and Pittsburgh, on the contract of R. & Staymaker. (Read S. 10.) The other claims were for extra services of various descriptions, among which were those for services retrenched by the order of the Postmaster General in November 1833, restored by his subsequent order, and were of the precise nature of those now made by R.; all these claims were known to Congress, and were of course the subject matter of this act, which they passed to meet all the cases presented. It authorized the Solicitor of the Treasury to settle and adjust the claims of the petitioners, for extra services performed by them as contractors for carrying the mail, under, and by virtue of certain contracts therefor, alleged to have been made and entered with them by W. J. B., late Postmaster General United States; and for this purpose to inquire into and determine the equity of the claims of them or any of them, for or on account of any contract or additional contract with the said Postmaster General, on which their pay may have been suspended by the present Postmaster General and to make them such allowances therefor as upon a full examination of all the evidence may seem right, according to the principles of equity; and that the said Postmaster General be and is hereby directed to credit such mail contractors with whatever sum or sums of money, if any, the said Solicitor shall so decide to be due to them, for or on account of any such service or contract; and the Solicitor is authorized to take testimony, if he shall judg e it necessary to do so; and that he report to Congress at its next session

the law and the facts upon which his decisions shall be founded. Certain claims were expected but without prejudice. As we cannot presume that Congress intended to make either an odious or unjust discrimination between the claims of Stockton, Stokes, and Moore, and those of other contractors, for similar services under similar circumstances and contracts, this law has an important bearing on this case in several particulars as a clear and decisve indication of the true meaning of the general act of 1836.

1. That it was not intended by the 17th section to annul any claim, contract or allowance whatever, allowed by Mr. Barry, or made by the parties subsequently, as illegally allowed, or as being contrary to law, or that any contract of the late Postmaster General was void.

2. That as the Solicitor was to settle every claim on the principles of equity, no equitable claim was excluded from his cognizance by the 43d section of the act of 1825, or the 17th section of the act of 1836.

3. That the services retrenched in 1833 and restored in 1834, were to be put on the same footing as any other service.

4. That the continuance of retrenched service under the order for their restoration was a fair subject of claim, not an illegal one.

5. That it was intended to validate every contract of the late Postmaster General, and did so, leaving the Solicitor to judge of the equity of the claim made under it.

6. That a court and jury acting under the 17th section of the act of 1836, on a suit by the Postmaster General, are authorized and bound to proceed by the same rules as the Solicitor, under the special act of the same date.

7. That it shows the intention of Congress to transfer to the Solicitor the same powers which the act of 1825 rested in the Postmaster General, in adjusting similar claims, and to put the successor of Mr. Barry in the same position of duty to credit the contractor with the allowances of the Solicitor as he was to credit those made by Mr. Barry, or to allow such as were equitable.

8. That the obligations to report the allowances, and the law and the fact on which they were awarded, shows the sense of Congress in requiring reports of contracts under the act of 1808, to be merely for information as to future legislation, as in the general act of 1836, and that these laws are all to be construed by the same rules and principles. Under this law the Solicitor awarded $161,000, including interest, on account of allowances by Mr. Barry, and claims made which he had not allowed; the amount of the former, $122,000, were credited by Mr. Kendall, who refused to credit the new claims allowed, amounting to $40,000, but on an appeal to the President by him, and on a reference thereof to the Senate, the judiciary committee reported that the Solicitor's award was final—that it could not be revised by Congress, or set aside on any ground that would not annul an award between private parties before a judicial tribunal. On a mandamus being applied for to the circuit court of the District of Columbia, a peremptory one was awarded to Mr. Kendall to credit the contractors with the $40,000, from which he took a writ of error to the Supreme Court, who affirmed the judgment in an [Read.] opinion containing this language. (12 Wh., 6, 11, 12.)

"Under this law the Postmaster General is vested with no discretion or control over the decision of the Solicitor, nor is any appeal or review of that decision provided for by the act. The terms of the submission was a matter resting entirely in the discretion of Congress; and if they thought proper to vest such a power in any one, and especially as the arbitrator was an officer of the government, it did not rest with the Postmaster General to control Congress or the Solicitor in that affair. It is unnecessary to say how far Congress might have interfered by legislation after the report of the Solicitor. But if there was no fraud or misconduct in the arbitrator, of which none is pretended or suggested, it may well be doubted whether the relators, (Stockton, Stokes and Moore,) had not acquired such a vested right as to be beyond the power of Congress to deprive them of it. But so far from Congress attempting to deprive the relators of the benefit of the award, they may be considered as impliedly sanctioning and approving of the decisions of the arbitrators. It is at least so to be considered by one branch of the legislature."

When we look to the broad powers conferred on the Postmaster General by the act of 1825, they will be found to be fully commensurate with those conferred on the Solicitor by the special act of 1836; the rule of action prescribed was "the principle of equity—to inquire into and determine the equity of the claim," which was no new rule, for since 1795, the Comptroller of the Treasury is bound to decide on all claims of individuals upon the United States, "according to the principles of equity and the usages of the department."—(1 Story, 409.) Nor is it a rule peculiar to the case of a mail contractor, or the settlement of an account at the treasury; the Supreme Court adopt it in all cases of claims or set-offs in suits by the United States against private persons, if they constitute a legal or equitable claim against the United States, if it has been the usage of the department to make the like compensation under the like circumstances, or the allowance of the claim is just and equitable in itself.—(15 Pet. 370, 375–6.) This is what is meant by the principles of equity and equity itself, and is applied to extra allowances for extra services, in all the departments of the government, incident to the powers of the office, without any act of Congress to authorize it.—*Ibid.* So that the only peculiarity in the special act of 1836, is what arose from the state of things which led to its adoption. It was sustaining an appeal from the decision of the Postmaster General then in office; Congress selected an officer to perform the very same duties which belonged to the Postmaster General in ordinary cases, and the effect of this substitution was, to give the same power and prescribe the same rules to the Solicitor, in acting on the claims of contractors, as the Postmaster General already possessed as to transactions prior to 1836, aud to compel him to give credit for the amount awarded. There is no one reason given in the report of the Senate's committee, or in the opinion of the Supreme Court, that would not equally apply to the allowance of the same credit as the Solicitor gave, if done by the Postmaster General, or which are not appropriate rules for a court and jury in a suit by the United States, to recover back money under the 17th section of the general act of 1836, or on the principles of the common law. The act of 1825 is a submission of claims on the

department and their settlement to the Postmaster General, as an arbitrator, whose award is of the same effect when entered in account to the credit of a contractor, and he must decide on all accounts as would an arbitrator specially selected, unless different rules are prescribed. The case of Kendall *vs.* the United States, is a judicial precedent of the highest authority; the record thereof is evidence of the usage of the department on claims of the same nature as those now before us, and the state of things which led to the passage of the special and general acts of 1836, throw much light on the 17th section of the latter, and the 43d section of the act of 1825, respecting the claims for extra services now under consideration, which are of two descriptions—1st. Those allowed by Mr. Barry. 2d. And those not acted on by him. Both kinds were embraced in the special act; the award of the Solicitor, the decision of the Supreme Court, and the report of the committee of the Senate, their union of opinion on the subject is a very safe guide for us in many matters in controversy in this case, independently of which there are other decisions of the Supreme Court which are decisive of these principles as to claims for extra services.—(15 Pet., 370.) That the power to allow them is incident to the principal officer of every department, without any positive law, for special agencies for any services not devolved on any person employed by the usage of the office, for what is over and above his ordinary and regular duties, not strictly appertaining to them according to the regulations, practice and usages of the department. Allowances of this kind are legal, and constitute an equitable claim where they are justified by the usage of the department, or where extra service is rendered under circumstances from which an implied contract may be presumed by the jury, or inferred from usage, or the claim is just and equitable in itself. To justify their disallowance, "it is therefore indispensable to show that there is some law which positively prohibits, or by just implication denies any allowance of the disputed items, or any part thereof."—(*Ib.* 371.) "Some law establishing clearly and unequivocally the illegality of each of these items."—(*Ib.* 372.)

If they have been allowed, there must be evidence "to impeach their fairness and legality" before they can re-charged, which can be done only by a suit by the United States, under the directions of the Postmaster General, but he can act in no other way on allowances made by his predecessor.—(15 Pet., 400, 401.)

"The right of reviewing the acts of a predecessor is confined to mistakes in matters of fact, arising from errors in calculation, and to cases of rejected claims, in which material testimony is afterwards discovered and produced, credits cannot be recalled on allowances made by Mr. Barry, within the scope of official authority, given by law to the head of the department." Whether he had this authority or not, was to be judged of by himself in the first instance, for every officer is bound before he acts officially to ascertain that he had power or jurisdiction over the subject matter; but his decision is not conclusive, it may be examined in any suit which the United States may bring to test the legality of the allowance, by the want of power, or its illegal exercise. When they do so sue, the whole burden of proof is on

them to show its illegality affirmatively, as well in point of law as in matters of fact. If no allowance has been made, the defendant must establish it according to the principles before stated; whether an allowance has been made or not, is a matter of fact and law. If an act is done, the legal effect of it is matter of law, and thus an entry of an allowance on the journal of the department has been held by the Supreme Court to be an allowance, though not posted in the ledger.—(15 Pet., 400.) But no form of entry is required to be made on the books, it is sufficient if the Postmaster General decided on the claim by exercising his discretion to allow or disallow, gave an order for a credit, specifying the amount allowed, and on what claim, his successor was bound to do all other acts which were necessary to give the contract the right to a credit, by making the act of his predecessor operate according to his decision.—(S. P. 8 Pet. 5, 14, 15.) When the law makes it the duty of a Postmaster General to enter a credit for an allowance to a contractor, he will be compelled to do it by mandamus, as in Kendall's case, or in case of all allowances, in fact, made by Mr. Barry and not entered on the books, such entry being a mere ministerial act requiring no discretion, and in no other sense an official act, than an entry on the minutes of a court pursuant to an order of court.—(14 Pet., 516; 12 Pet., 625; 8 Pet., 307.)

We now proceed to a general view of the accounts which are before us on the part of the United States. The first is brought up to the 1st of April, 1832, which ends with a balance of $2,097 against the defendant, with which the last account begins; this balance is also admitted by the defendant on the first item of credit, which makes it thus far *prima facia* a settled account, conclusive between the parties unless errors appear on its face, or are made out by clear proof, the burden of which is on the defendant.

You will decide whether he has succeeded in doing this to your satisfaction, we incline to the opinion he has not. If he has not, then you will begin with this balance, and look to the other two accounts as specifications of the claims of the United States and their admissions to credit; in the one audited in 1839, you find that with the exceptions of fines, drafts on postmasters for small sums, and drafts on Colonel Page up to the close of 1835, all the charges are simply of "cash," under the respective dates. In the account audited in 1841, and stated for the purposes of this trial, you find the same items stated more in detail, referring generally to the drafts of R. on the department, by their dates and times of payment, and where the item is cash, containing some further explanations, such we may presume as were in the power of the Auditor to make from the information of others, as he was not in office when the transactions took place. The account of 1839 was made out by the gentleman who was one of the assistants of Mr. Barry, but who it appears was not entrusted with the confidential affairs of the office, respecting the acceptance and negotiations of drafts for its use, or the other means of raising money, for reasons which have been given in evidence by Mr. Browne. The evidence of Dr. Mason is that, when he became the treasurer of the department, in February, 1835, he found its affairs and accounts in great confusion and deranged—much in debt—impossible to ascertain

what was due to, or by it, or to see any correct statements thereof, the impression was that its affairs were easier, but he could not see that it was so; comparing the reports of the treasurer with those of the Postmaster General, there were inaccuracies. Dr. Mason objected to the prevailing practice of making conditional acceptances, set his face against it, but finally yielded in giving them under the directions of the Postmaster General before making absolute acceptances, he consulted Mr. Suter to know if the amount was due to the drawer, and depended on his representation, but he was wholly ignorant that there were any acceptances for the use of the department itself, and took for granted that all absolute ones were for money due contractors. He also states Mr. Suter kept a pay-book for his own regulation, and gave him a careful statement from them, but said there was difficulty in making out the contractors' pay, that there was a want of official communication between the different branches of the department, and Mr. Suter was obliged to make out his accounts as well as he could. We have referred more fully to the statement of Dr. Mason, as both parties give it their entire credence, so that you and we may take it to be true, the same remark replies to Mr. Suter in an opinion. The evidence of Mr. Suter also shows the irregular course of the business of the office, he states that Mr. Barry sent him the original orders for the allowances made on the 29th of April, 1835, on different pieces of paper, describing the service, and stating the sum allowed for each [cash,] whereas the usual course of the department would be to send them to Mr. Hobbie, at the head of the contract office, and for him to enter them in his books. Mr. Suter also made the entries in the books of the department of pay to the contractors, that being his appropriate duty as pay clerk, he also entered in R.'s pass-book the credit and debit items for each quarter, from April 1, 1832, till April 1, 1834, and stating the balances, this book was kept from the books of the department, the drafts themselves in regard to drafts, for the information of R. and his own convenience, the red ink entries were made by the direction of the Postmaster General, or as drafts, but Mr. Suter did not know whether they were for transportation or the use of the department, though charged to R. in the pay account. Mr. Suter drew them, they were filled up for transportation and accepted, he drew the $50,000 batch of the Hamilton and Gouverneur drafts, but don't know whether they were signed by R. when sent to New York for negotiation. They were not entered in the pay-books, were delivered to Mr. Browne, and never afterwards seen by Mr. Suter, who does not know what become of them, the object in drawing them was not stated to him further than that it was by the order of the Postmaster General through the treasurer, Mr. Browne; such as were paid were charged to R. in his pass-book.

This evidence shows how the affairs of the department were conducted in-doors; how they were conducted elsewhere, you can ascertain from the correspondence between the department and its agents; their testimony at this trial; and the accounts of its transactions in the various banks with (private) whom accounts were kept. *E. g.* the letter of Gouverneur to Mr. Browne, February 25, 1834, informing him that the 7th Ward Bank had authorized him to draw for $25,000

and asking "in what shape shall the evidence of the debt of the department be made."

It appears from the evidence of Mr. Suter, that R.'s account was never adjusted on the books of the department before 1839; but he also proves that R.'s account was made out during the investigation in Congress, as it appears in the public documents which states a balance in his favor on the 1st of July, 1834, of $7,529, when it stopped. In a tabular statement of actual balances due on the 1st of October, 1834, R. is debtor $27,332, but this remark is added: "The account of J. R. is not finally adjusted to 1st of October, 1834, checks having been issued in his favor, with which he is not properly chargeable, but the amount cannot now be ascertained, it is believed, however, that he is entitled to credit to the full amount charged to him." A similar note is applied to the account of Mr. Stockton.

In Mr. Suter's account kept for Reeside in his pass-book the last balance is entered 1st April, 1834, $56,372; in the tabular statement Reeside is credited with a balance from that time back for some years at the end of each quarter, but on 1st April, 1834, is debited to balance $23,563; in the account in the Senate document the balance to his debit was $54,369. These accounts and statements were made out before the fire in the department, when all its papers were in existence; those made out for Congress were made on the highest responsibility, and must be taken to have been sanctioned by the Postmaster General. Reeside's pass-book was also made out at each quarter by the pay clerk, the proper officer to make the entries in the pass-book, as a check on each party; and if credit is due to any account or statement, it must be those made to Congress; so of entries made in a pass-book when the transactions were recent. It cannot be expected, or be true, that after the destruction of papers by the fire there could be as correct or safe materials for settling Reeside's accounts as before, or that an account made out in 1841 for this trial ought to have greater credit than one made out for Congress in 1835. The subject of investigation by them and us is the same, the state of the account of Reeside with the department, when the large amount of drafts was accepted and negotiated, and loans made to whom the drafts and checks were properly chargeable, so as to ascertain the balance due to and from him, and by that means their object and application.

In the account laid before Congress the debit to Reeside's account of cash in banks, except drafts on postmasters and Colonel Page, credit is given for services as they are rendered quarterly, and a balance stated, and carried to the next quarter, as was done in the pass-book. Thus stated these accounts may exhibit something like their true state. By looking at the account of 1841, it appears that the debits are carried out regularly as to dates, but the credits are not carried out in the same way; they are postponed to a period far beyond the time of service, as is evident on inspection. Thus 1st of April, 1834, p. 15, debtor Reeside to $231,542, credit, page 3, $16,553; balance debit Reeside, $215,000; 1st of January, 1835, debit $239,000; 1st of January, 1836, $295,000; when his contracts closed, 1st January, 1838, $79,000; 1839, $19,000; 1840, $32,000; 1841, after Mit. items, to $47,000. Another difference in the two accounts is, that the same

items which are charged as cash paid in banks in the account of 1835, as cash in the account of 1839, are debtor as drafts in the account of 1841, with the exception of some ten [or two] or more. These different modes of stating the items, of entering credit whether at one time or another, do not affect the ultimate balance, or operate injuriously to the defendant, otherwise than by representing him as debtor at a particular date to an amount far greater than is pretended by plaintiff.—Ex. Gr. If Reeside was in debt on the 1st of April, 1834, $216,000, that amount of cash, drafts, or checks must have been applied to his use as an advance. The Congress account states that Reeside's account would be balanced by credit to which he was entitled on the 1st October, 1834, as the credits are entered up to that day. His account, as stated in 1841, stands thus: Debtor, page 21, $346,385; creditor, page 7, $116,893; Reeside, debtor, balance $229,492—$14,492 more than in April preceding, when by the account and tabular statement of 1835 the debtor balance in April of $23,563 was met by creditor due him in October. If this was true, then the checks, as they are called in the note to the tabular statement and account of 1835, or drafts, as in the account of 1841, amounting in April, 1834, to $215, and in October to $229,492, were not properly chargeable to Reeside, but must have been for the use of the department—a conclusion directly the reverse of what would be true, if the actual balance due by Reeside was what is the balance appearing on the face of the account of 1841, by not entering the credit at the time he was entitled to it, as was done in the pass-book and the Congress account of 1835.

Your attention is thus called to the subject, not with any view of imputing any design in the mode adopted in making out the account of 1841, but to induce you to look to the state of the account at different times of debtor and creditor, so as to enable you, to some extent, to solve the important question which puzzled the department and committees of Congress in 1834–'5, to whose account were these large sums raised by drafts, and paid by cash or checks chargeable on the state of accounts existing at the time they were drawn and paid. For reasons which we shall give hereafter, we cannot presume that so large advances would be made to Reeside on his contracts; and if he was not a debtor to the department, it follows that the difference between the debtor and creditor amounts was composed of items for the use of the department, whether stated in the account as checks, cash, or drafts, is immaterial to the justice of the case. This general reference to the state, the usage, and course of the department, and the various accounts in evidence, presents [into fresh] difficulties in ascertaining the affairs of the office, taken by themselves as explained by its officers and clerks. A reference to the account of the defendant in connexion with those of the plaintiff's affords much relief in ascertaining the true state of things, by the admission of the defendant of the charges against him, with but small exceptions, save the Page, Gouverneur, and Met. items, this account was made out with the assistance of an experienced clerk and able counsel, which gives additional weight to the mere admission of a party, in words or by writing.

But it is not to be taken as an account between private persons voluntarily rendered, claiming a balance; the United States have by their laws made themselves privileged parties in accounts by making treasury transcripts and post office statements of accounts admissible evidence in all suits brought by them to recover debts or balances of accounts from any person to whom they have made payments, or with whom they have had contracts. They have also made themselves privileged suitors by having a judgment or trial at the first term after suit is brought, and by prohibiting a defendant from giving any evidence of a claim or credit which had not been previously presented to the accounting office of the appropriate department for allowance and rejected; the United States, however, are privileged only as to remedy, not as to right in the trial of their suits.—(9 Pet., 743.) It is by compulsion of law, therefore, that the defendant renders his account on a demand of an accounting officer for one on penalty of forfeiting his claims to rejected creditor. His position is in this respect like a defendant in his answer to a bill in chancery for an account. If he admits the receipt of the money charged in the bill, and avers the simultaneous payment of the sum so admitted, the whole must be as evidence so as to put the plaintiff to disprove the payment. But if the payment or discharge is alleged at a different time from the receipt, or by a different transaction, the answer will be taken as an admission of the receipt, but not as evidence of the payment. Such is the rule of equity and of this court.—(1 Baldwin 494–495.) So in action of account vendee, when the defendant renders his account on oath before auditors, the same rule applies, but neither of these cases apply to the present, in all particulars, in which the defendant is not entitled to the benefit of the oath, which is, that being equivalent to the positive testimony of one witness, it must be disproved by the positive evidence of one witness, and circumstances equivalent to another, or by two. In a bill in equity, or action of account vendee, the plaintiff is not a witness, he must rely on disinterested testimony, whereas the United States make the statements of their officers when official, admissable evidence in all cases, whether at law or in equity; when they sue in a form of action in which the defendant cannot have his oath, every principle of justice requires that his accounts of his transactions as an agent of the Post Office Department, rendered by compulsion or pain of forfeiture, should be taken most benignly in favor of his accounting for money admitted to be received. So far as he charges payment of money received as agent, in a manner and at a time suited to the nature and exigencies of his agency and the purpose of its creation, it ought to have at least the same effect as a statement of accounts by the United States, whether the payment is charged at the same time with the credit for the money received, is not material, if the alleged payment is consistent with the object and purpose of the receipt.

But the defendant's account is no evidence as to transactions unconnected with his agency, such as claims for contract, or special services or allowances in carrying the mail, unless it is to meet charges of money of which he admits the receipt, or in some special cases. Nor is any subsequent account or charge any evidence in his favor; he

may withdraw his first account and substitute a new one; it, however, will not deprive the United States of the benefit of the admissions in the old one, yet if they do claim the account as an admission of credit, they must take it subject to the concomitant charges which account for the payment of the money credited to the United States, or the department. An entire new account or items may be presented for allowance or rejection, so as to enable the defendant to claim a credit at the trial, in which case he is bound to prove it affirmatively, as in a private account; he may also avail himself of any errors in his original account, when they appear on its face or can be established by extrinsic evidence.

The charges in the defendant's account in this case, which accompany the Cr. to the United States, being made evidence against them, must remain to their Dr. until they disprove them by evidence tending to disprove the ultimate application of the sum charged to their use. It is not sufficient the receipt of money, the proceeds of a draft or check by the defendant, and its payment by the department, for this goes no further than the admission in the account, and it is perfectly consistent with the nature and purpose of his agency, that the defendant should receive money at one time, place, or bank, in order to meet an engagement of his own for the use of the department, or of its own acceptance at another. Drafts discounted at one bank may be paid by discounts by other banks, or loans by them or individuals to R., or the department, they may be renewed at the same bank, and the successive checks of R. for the proceeds, may show the duplicate or triplicate receipt of different sums at different times, when if the proceeds of the new discount were applied by him to pay the old, he would be entited to corresponding credits.

The evidence before us is full to show that these agency transactions were so complicated in all their ramifications of time, place, space, persons, banks, and circumstances, as to render it impossible to come to any correct conclusion as to the ultimate balance between the parties, or any other principles than such as we apply to the defendant's account under the circumstances of this case. It is placing the United States in no worse if not a better position than they would stand in if we take their account without the aid of that of the defendant.

OFFICIAL ACCOUNT OF WHAT EVIDENCE.

1810, 2 Story, 1166.—Copies of accounts current of postmasters. No provision for contractors' accounts; they are left under the general provision as to public accounts. An account current with a postmaster is notice, because it is the result of the quarterly accounts made up and sent by him to the department; not so as to other accounts which were under the act of

1797, 1 Story, 464, sec. 2—Applied to contractors' accounts with post office, "a transcript from the books and proceedings of the treasury, certified, &c., shall be admitted as evidence. Also copies of all papers relating to the settlement of accounts."

1825, sec. 31.—Certified statements of accounts of postmasters and contractors, after they have been examined and adjusted, &c., under

the seal, &c., shall be admitted as evidence in all suits by Postmaster General. Also certified copies of the quarterly accounts of postmasters.

1836, sec. 15.—Copies of papers pertaining to accounts in the office of the Auditor of the Post Office, certified by him, shall be admitted as evidence.

"An account stated at the Treasury Department which does not arise in the ordinary mode of doing business in that department, can derive no additional validity from being certified under the act of Congress. Such a statement can only be regarded as establishing items for money disbursed through the ordinary channels of the department, when the transactions are shown by its books. In these cases the officers may well certify, for they must have official knowledge of the fact stated."

Where a suit may be brought against a delinquent contractor, the auditor shall forward to the district attorney copies of all papers tending to sustain the claim.

A statement of the account certified, &c., shall be admitted as evidence.

In cases to which the act of 1797 applies, (3 Pet., 12,) the Supreme Court decided that a treasury (8 Pet., 381) transcript or statement is only regarded as establishing items disbursed through the ordinary channels of the department, where transactions (397) are shown by the books, and the officers must have had official knowledge of the facts stated. An account stated at the Treasury Department which does not arise in the ordinary mode of doing business in that department, can derive no additional validity from being certified under the act of Congress.

8 Pet. 382. The issuing of warrants is an official act, and proved by being so certified. [382.] But the execution of bills of exchange and orders for money on the treasury, though connected with the settlement of an account, cannot be [8 Pet. 383] officially known to the accounting officers.

A transcript of accounts from treasury containing [396] items of payment to others, on the authority of the person charged, should have annexed to it a copy of the instrument, authorizing the payment. Where the United States held a person liable for the acts of his agent, the agency must be made to appear by a copy of the power.

383. A transcript does not mean the statement of an account in gross, but a statement of the items, the debtor and creditor as they were acted on by the accounting officers of the department. The defendant is unquestionably entitled to a detailed statement of the items which compose his account, otherwise no proper effect could be given to the provision respecting credits claimed on the trial, which had been rejected at the treasury.

If the defendant is called on to render an account, on which the plaintiff seeks to charge him, the account must be taken entire, and cannot be garbled by striking out the credits. So where a plaintiff renders an account at the instance of the defendant, to be used in his defence, the account thus rendered is considered as the admission of

the party, and its parts cannot be separated. But the treasury account does not rest on the same principle.

The accounting officers act on the accounts, and [384] give to the credits as entered their official sanction. The vouchers of an individual are submitted to them, and their decision has always [12 Pet. 611] been considered as conclusive on the government, though not on the individual. The law provides that rejected items may be allowed by the court. If, as in the present suit, certain items are charged to the defendant, which the treasury officially know to be correct, and no other evidence of them be produced, they should be rejected. [384.] The defendant is entitled to a certified statement of all credits which are founded on his contracts, as allowed by the accounting officers, and to their full benefit in a suit by the United States, [384] and under no circumstances has the United States a right to withdraw credits which have been partly allowed.

So far as the account represents the official action of the treasury it is made evidence by the law, but when it contains any items of debit unsupported by other evidence, and not of a nature which are proved by the transcript, the credits, when they have been duly examined and sanctioned, are evidence for both parties, but the debits objected to, though charged in [397] the same account, are not thereby made [398] evidence, and must be rejected by the court, unless the transcript is evidence of them *per se*.

385. Nothing is more unjust than for the government to withhold credits from an individual which its own officer has decided and certified to be just and legal, until he should admit charges unsupported by proof. His vouchers are in the treasury, where they remain after they are allowed, and he can ask only for evidence of their allowance, which cannot be refused, or the credit withheld, till he admits the debit items, and in a suit by the United States the defendant may avail himself of the decision of the accounting officers, without any restriction of his right to object to improper [416, 417] charges, or any reference to them. The government has no right to impose any condition on him. A treasury account containing debits and credits cannot be withdrawn. A treasury transcript establishes only such debits as are for money disbursed through the ordinary channels of the department, where the transactions are shown by the books, and where the officers of the department must have had official knowledge of the facts therein stated. So, on the other hand, no credits can be allowed as a credit in the account of a contractor, or an offset against the United States, arising from an irregular disbursement of public funds to a person not entitled to receive them, who was unconnected with the department of which he was an officer, agent, or contractor. All such transactions are governed by the same rules as apply to individuals in private transactions. What, then, are the transactions of the Post Office Department, a statement or transcript of which are evidence against contractors?

1825. sec. 1. The carriage of the mail, expenses in its conveyance, expenditures in the department in all duties assigned to it, contracts, accounts relating to or growing out of them.

1836, sec. 2. Official accounts are those relating to the subjects

specified, "transportation of the mail," &c. The accounting officer is an auditor, to receive all [sec. 8] accounts arising in the department or relating to it, audit and settle the same, and report the balances to the Postmaster General, who may appeal to the Comptroller, whose decision is final, so if by the contractor.

He shall report the manner and form of keeping and stating the accounts of the department, (sec. 9.) Postmaster General shall decide on the mode of keeping and stating accounts. The accounts of the department shall be so kept (sec. 12) as to exhibit the amount of expenditures, compensation of postmasters, transportation of the mails, etc.

Sec. 32. Postmaster General shall report to Congress, at each annual session, all contracts, etc., allowances to contractors, incidental expenses, finances of the department, fines.

These, then, and these only, are the legitimate official subjects of the accounts of the department, a transcript or statement of which is made evidence by the acts of Congress.

Transcripts in the act of 1797 and statements under the acts of 1825 and 1836 mean the same thing—a detailed statement of the items which compose the account.

A transcript of the entries in the ledger is not such a statement or transcript of accounts as the law contemplates. It is merely an account current, which gives no details, but debit a sum in gross as entered on the ledger.

1839. This account, as stated by the auditor, is a mere account current. It comes within the objection stated by the Supreme Court in as (8 Pet., 383) not notice to a defendant; is not admissible evidence of the debtor items, and would have been rejected, had the objection been made to its admission as evidence.

The account of 1841 (the printed one before you) is a different description, being a statement of the accounts more or less in detail—sufficient in some, defective in other items, and has not been objected to as wholly inadmissible. It has been read in evidence, "saving to the defendant all exceptions to the competency of the account (8 Pet., 413) to charge him otherwise than as the items of the charges should be supported by proof," and objections to some items as inadmissible and some out of time. By this you will understand that, so far as the account is in conformity with the acts of Congress, it is proof of the charges, and must be rebutted by the defendant, or the charge is established.

Where the requisites of the acts of Congress, as settled by the Supreme Court, are wanting, the account is not evidence, and the charge must be made out by common-law proof. To conform to the law, the charges must come under some of the items enumerated in the act of 1836, which are the subject-matter of a report to Congress—contracts, allowances, fines, etc., transportation of the mails, incidental expenses, etc. All other charges in the account are excluded, from the operation of the acts of Congress, and must rest on the common law rules of evidence.

Drafts by a contractor on the department, by the department on the postmasters, fines imposed, stoppages of pay for failures, for discon-

tinuance of service, its curtailment, or other retrenchments of contracts, are within the law, because the fact is officially known to the accounting officers by their own knowledge, or the communication of postmasters, pursuant to instructions and the known usages of the department. Cash payments on contracts are of the first class, and the account is evidence against the contract. But all charges which do not relate to contracts for the transportation of the mail, special allowances, incidental expenses or fines, come within the second class; and the account is not evidence of charges against the contractor, because the transaction is not an official one.

The Constitution of the United States gives power to Congress to borrow money on the credit of the United States, but not to any officer or department, without the authority of Congress first given.

No transaction relating to the loan of money by the department is an official one; and no entry on the books, no act of an accounting officer, no transcript or statement of accounts between a contractor and the department, in relation to his agency for such a purpose, can make the transaction official.

The contractor is a special agent for purposes unknown to the Post Office laws, and his accounts must be settled by the same rules of law and evidence which apply to agent and principal. If the account now before us had separated the two classes of charges, and placed them under the heads of transportation in one class and agency for raising money for the use of the department in another, there would have been no difficulty in drawing the line between official and unofficial transactions; the law is plain, if we were enabled to apply it on the face of the account. But the items are so blended that we cannot separate them, on the debtor side, either from the account itself or from the evidence in the cause, so far as it bears on the drafts of the defendant on the department, cash payments by checks on banks, or otherwise—which constitute the only items of any important nature in controversy between the parties.

We will dispose of the small ones at once.

1. Drafts on postmasters are official acts, and there is no evidence to contradict or doubt the propriety of the charges stated.

2. The fines claimed amount to $150, statement of difference 41, 42, 43, 46. Defendant had notice that they were imposed, and has offered no evidence to show their remission, or that the failures did not take place.

3. Drafts on postmasters retained by the defendant more than two years till the sureties are released are proper charges, though they have not been paid.

You will now direct your attention to the weightier matters of the account.

The aggregate of the charges by the United States is $513,057 08, composed of cash, drafts on postmasters, or the department, and fines. Drafts on postmasters, and fines amounting to ————, leaves charges and drafts on the department.

The aggregate of credits is $464,994 46, in which is comprised the amount of $141,499 90, for cash and drafts for the use of the department, which is an unequivocal admission that so much of the charges

is not an official transaction, of which the account, however correctly stated in detail is evidence.

Being unofficial acts in making such charges, the statement of the account by the Auditor, in referring the credits to any particular item of charge is as unofficial as the charge itself, unless it appears in evidence that the items of dr. and cr. correspond, and are correctly applied in the account.

If they do not appear to be so on the face of the account, we must resort to intrinsic evidence, to remove the ambiguity apparent on inspection, arising from the admitted extrinsic facts, that all the drafts of the defendant on the department, purported to be drawn on account of transportation, and all the checks of the department on banks on his account, or issued on a requisition, were marked in the margin as given for transportation, when the form of both drafts and checks were the same, though intended for and applied to the use of the department in some and transportation in other cases.

The evidence, however, does not remove this ambiguity, whether we resort to the books, the clerks of the department, or the witnesses, taken in connexion as explanatory of the account, and all composing an aggregate mass of evidence bearing on the all-important question of what drafts and checks were in fact for transportion, and what were to meet the exigencies of the department. That its embarrassments were extreme, that the defendant was an agent to provide money for its relief by his drafts on the department, by it accepted and negotiated by bank and individuals at rates of interest and usury, varying from two and a half to one and a fourth a month, besides commissions for endorsing and drawing or guaranteing, is not to be doubted, if you believe the witnesses and give credence to the letters which have been read in evidence. There was no account open on the books of the department of bills payable debtor and creditor, or of loans negotiated for its use, or on what security. The only books in relation to defendant's drafts on the department, seem to be the one kept by Mr. Browne, the other by Mr. Suter ; the first containing a list of drafts accepted and paid by him for the department, by the authority of the Postmaster General, the other kept in the possession of R. as a pass book, in which he was charged by Mr. Suter with drafts drawn by him on the department on account of transportation, but credited with none which were for the use of the department.

In both books there were pencil and some other marks denoting the opinion of Mr. B. or Mr. S. as to the application of the draft ; but though these books connected with the evidence of these gentlemen may be evidence of the fact that the drafts noted by them were made and accepted, their entries, memoranda, or marks are not in themselves any evidence of their application. Neither Mr. Gardiner, who audited and adjusted the account of 1839, nor Mr. Whittlesey, who re-stated them in 1841, have charged R. with all the drafts drawn by him on the department and accepted, which are entered in either book ; that they have charged some while they omitted others, is evidence only that they may have exercised their best judgment on the information before them, not that they discriminated correctly, or that the result of their judgment can effect R., if it is not supported by legal

evidence. No drafts accepted by Mr. Barry since early in 1832 has been produced, their loss by the fire in the treasury building in 1833, and the General Post Office in 1836, has been sufficiently established to let in secondary evidence of their existence and contents. This consists of the books of Mr. B. and S., the journal, the cash, and check books of the department, the requisitions and checks on bank, bank accounts, bank books of the department, letters to and from it, and evidence given at the bar, which is satisfactory to us in point of law.

It is competent to prove the existence and contents of the drafts and checks, and in our opinion establishes both facts, but this is a matter for your decision on the evidence which has been given. Assuming that the existence and contents of the drafts and checks to be as fully proved as if they had been produced, they do not remove the difficulty of ascertaining whether they were drawn for the use of R. or the department, for though they all purport to be for transportation the fact is otherwise, if you give credence to unquestioned evidence, or to the account of the Auditor, nor does the production of a requisition on the treasurer of the department for the payment of a draft, with his check on a bank, prove anything more than that there was a draft as described due, payable and paid on the day they were given, as the form of the draft, requisition and check appear to have been the same, to whatsoever use the application was made. If the draft was payable or endorsed by R. to a third person, R. would be properly chargeable, unless it appeared that such third person received it for the use of the department, so if the proceeds came to the hands of R. and were applied to his own purposes, such transactions would be official ones, of which the statement or transcript of the account would be evidence by the act of Congress if known to the department. These are the rules and principles by which you will apply the evidence to the items of charge in the Auditor's accounts; in order to determine whether the particular item is to be referred to R. as contractor, or the special agent of the department. Another rule results from an act of Congress passed in 1823, which applies to all contracts made by officers of (3 Story, 1876,) the United States, it prohibits any advance of public money in any case whatever, and declares that in all cases of contracts payment shall not exceed the value of the service rendered, which Mr. Kendall has very properly (Rep. 30, U. S. *vs.* Bank Metropolis,) construed to mean "an authorized equivalent in service rendered for the money paid."

As it is thus made the duty of the Postmaster General not to make any advance of money, nor on a contract to make any payment beyond the service authorized and performed, we must presume he did not intend to do so. He is presumed to perform and not to violate his duty. An advance contrary to law is therefore not an official act, done in the execution of the contract, on the part of the United States, the act of 1823 is a limitation of the power of all officers, which they are presumed not to pass over. When the accounts of a contractor are composed entirely of mutual items growing out of the contract, it is not material whether advances are made or not, as to his liability to account, or refund. The 17th section of the act of 1836 provides for it. The advance though illegal may be recovered back at once by

suit, or in an action for a general balance of account in which the statement of his accounts by the auditor is evidence. But where the account is a mixture of items under contracts, and items growing out of a special agency as this is admitted to be the case is different. In such a mixed account any balance claimed by the United States beyond direct payments on the contract must be referred not to the contract, when it would be an advance, but to the agency which is in no wise connected with it. If there is no other process by which we can separate two classes of items, or any evidence by which to apply an item to the contract, or the agency, it must be by a rule of law, which is that as the office is presumed not to have made an advance till the contrary appears, any balance due beyond the service rendered must have accrued by the agency. Consequently charges on the office books relating to the agency are not evidence, when similar charges in a private account would not be, because this is an agency not authorized by any law. A cash book is not evidence, nor a check and requisition, unless it is for payment for services under contracts, or special allowances. The accounts ought to have been kept distinct, drafts and cash for service in one account, and for the use of the department in another. The law separates them, though the department does not, and throws on the United States the burden of proving the excess of drafts over the services to have been payments on contracts. By this excess of drafts we mean not to say that the acceptance of a contractor's draft is illegal, by being an advance, or that it is not an official transaction, making it a proper charge to the contractor, on account of services of which the account is evidence, on the contrary a draft accepted on condition of the performance of the drawer's contract, is conformable to the usage of the department sanctioned by the Supreme Court, and is not strictly an advance of money, but rather a loan of the credit of the department, to enable the contractor to perform his contract; (16 Pet. 399,) such drafts are therefore properly chargeable, and he must show affirmatively that the proceeds went to the use of the department. The drafts to which we apply this rule are those which are accepted absolutely, so that if by charging R. with the conditional acceptances, and giving him credit for his services, they appear to be fully paid, or there is a balance in his favor less then the amount of absolute acceptances, the surplus must be considered as unofficial, of which the account is no evidence, unless sustained by other proof by the United States.

Here is the great difficulty in this case, to ascertain the nature of the acceptances charged to R.; if they had been preserved they would show their original application, but they have been lost by an accident, and though the proof of their dates, the time of payment, and their amount may be satisfactorily made out, no light is thrown upon this interesting question of the form of the acceptance which denoted their use and application. Unfortunately there is on the books of the department no account of bills payable, Dr. and Cr., which would have shown their application to services or the use of the department; in the only loose memorandum book of these transactions there is nothing like a regular account concerning them, and the evidence of the officers of the department is that they were not charged till paid, whereas

they ought to have been charged to the proper account when accepted. There is no account of loans Dr. and Cr., yet their amount is large, of much of which we have no evidence as to the security or paper on which they were made, or the terms and time on which they were negotiated. The course of the department as to these transactions was also peculiar; it was confidential, unknown to the two Assistants Postmaster General, and the pay clerk. Mr. Browne was the confidential agent between the department and the banks and others employed to negotiate the drafts and loans, yet he tells us he was not privy to all the transactions, nor informed as to whose use the drafts were drawn or accepted; he and Mr. Suter were alike compelled to make marks indicating only their opinion, but derived from no official knowledge of them as official transactions, arising in the regular business of the department. The confusion which this state of things throws upon the accounts, is increased by the testimony of the witnesses. Dr. McClelland states that about $60,000 of acceptances were shown by R. to him before R. had put his name to them, and other witnesses testify to kindred facts, which show the utter want of any semblance of regularity in accepting, charging, transmitting, negotiating, or paying these drafts. Whether the payment was by renewals in the same bank which discounted the first, or a new loan obtained from one bank to pay an old one in another, whether for the same amount, or by adding a number of small drafts to make up a larger one, or splitting large ones into smaller ones, as in the 50,000 loan from the W. Bank, we can neither decide from the face of the account or the extraneous evidence.

BARRY'S ALLOWANCES.

Objections founded on act of '25, sec. 43, provides for two cases:

1. No additional allowance shall be made beyond the contract, unless additional service is required.

2. Nor exceeding the exact proportion between original amount and the additional duties.

This is a rule for the guide of the Postmaster General in the exercise of his discretion, and applies only to additional service under existing contracts, not to contracts for extra service unconnected with it.

Additional service applies to the increased weight of mails after the contract is made. Need not be additional stock, as under act of 1836. Diminution of passage money is a good consideration. Postmaster General is the judge of the proportion—the law points to no other. He estimates the proportion according to his judgment, and without any fraud in the contractor. Then (6 Pet., 729) applies power in office and fraud in party. Also (14 Pet., 458) presumed to do his duty, to have had evidence.

No tribunal can re-examine the proof when he is made the judge. No one has the same knowledge.

This act imposes no condition on the contractor; the United States must prove the want of service and the over proportion. But how prove either? the Postmaster General has decided both, and given the credit, which cannot be recalled by any official power. It must

be by suit on common law principles, of which the 17th section of the act of 1836 is only an affirmance, as Supreme Court say it was passed because abuses had been supposed to exist. Take, then, the common law according to 6—14 Pet. and 15 as to allowances. 15 Pet. clearly and unequivocally, unfair or illegal, by positive law or implication.

Is it a legal or equitable claim, just in itself, the usage of department, or by an implied contract from circumstances.

Take, then, the 17th section as the common law, not as a new rule.

1. When money has been paid under pretence of service, when in fact such service has not been performed. This would be "fraud in the party," according to 6 Pet., but every presumption is against the charge, for the law presumes there was sufficient evidence. The United States must prove that there was no evidence before the Postmaster General. We must not weigh evidence now, after all vouchers are burnt. It must appear that the discretion of the Postmaster General was not exercised. That it was not a case on which his power arose. Not left to you or us to judge of the sufficiency.

2. Where additional allowances exceed what might rightfully have been allowed by the provisions of law. Nor exact proportion, but what under all the circumstances of the case, the law prohibited, clearly and unequivocally; not in a doubtful case, but where it was illegal on the first blush; not in a case where there was discretion and power, but where there was neither power or discretion.

In consequence of fraudulent representations. We recollect no evidence of this; you will judge and deduct if you are satisfied of the fact of fraud.

4. Credit by mistake of an officer or clerk. A mistake in fact, error in calculation, &c.; a clerical mistake. Not a mistake in law, as a misconstruction of a contract.

Ex. Gr. as to mail guards; we think this allowance ought not to have been made, as the contractor was bound to furnish them. But the Postmaster General must necessarily have power to construe it or he could not settle an account under it. Take it as an error of judgment, a wrong conclusion. He decided, gave a credit, and no tribunal for appeal or revision. The same principles which the United States contend for would authorize us to review every credit under a contract for regular service. Here it is allowed as such for aught we can see.

5. Or collusion or misconduct of any officer or clerk. This is not set up, consequently 12 Pet. applies. The law gave power, discretion; both were exercised, no appeal.

In such cases, you or we cannot do what the Supreme Court very strongly intimated Congress could not do. An objection is made to the allowance of two-thirds to R., under the joint contract between him and Babcock, when R. was entitled to only one-third. In this, we must presume the Postmaster General acted on competent and sufficient evidence till the contrary appears. Unless the United States show that they have accounted with Babcock. Mr. Suter says he had all the vouchers and documents relating to these allowances. None can be found; they are then destroyed. Unjust in the United States to require any proof from R., and every principle of justice throws on

them the burden of that clear and unequivocal proof. The law says he had full proof; the fact must be made out that there was neither competent or sufficient evidence before Postmaster General.

The 17th section embraces all the cases which Congress intended should be overhauled on a suit. With full knowledge by reports in both houses at the previous session, and acting to correct supposed abuses, they stopped here. We must stop where they did unless in some very clear case. You will judge whether any others exist in the evidence.

CURTAILMENTS AS TO RETRENCHED SERVICES.

By the terms of the contracts the Postmaster General may discontinue. He may curtail consequently, and by the usage of the department. But he has the power to restore, and if he directs a restoration, then the original contract for service is revived. If the original contract was valid, the curtailment valid, the restoration valid, and the contract performed, why do United States complain?

Barry concealed the restoration. What then? The United States had benefit; but R. concealed it, and published the curtailments.

Shall a fine, and penalty, and forfeiture of service be the result? Is this equity, justice, or law? Where is the fraud? The people were deceived. Suppose it was so, under what circumstances? In the midst of agreat political contest. President and Postmaster General charged with prostituting the office to party. R. a warm personal and political friend. Department charged with favoritism to him, his account the special object of attack. Taylor's affidavit only to the fact and amount of retrenchment. Shall the contractor be fined $18,000 a year for the sins of the partisan or politician? If this rule was applied to every one who deceives the people, people never ought to be brought into court. But in this case it was the people who forced the restoration. Public opinion broke out against the curtailments. But they were appeased by the restoration, and the public had the benefit, and ought to pay. If the service was rendered, the department must know—did know, and paid for it. The only question then, is, for you, was the service rendered? On these principles we have stated our opinion of difference 2 to 10. Cr. $8,750 to United States, as it was paid to Slaymaker. Cr. R. $20,000, if you think the weight of mail from the time of the contract in January, 1832, was so increased in 1834 and 1835, in the proportion of $10,000 to $27,000, say 36 per cent.

Contracts must be construed with a reference to the state of things to which they relate at the time. When mail was 100 pounds, when contract was made, the price was proportionate. When it weighed 136, not equitable or just to allow nothing in addition.

[Read.] This is usage of department, as appears in Kendall *vs.* United States. Sanctioned by Congress in act of 1836, the Solicitor Senate committee.

As to Slaymaker's interest he has set up no claim. The United States don't pretend any claim by him. He assigned to R., date not material.

TRANSPORTATION ACCOUNT OF R.

R. charges in his account for transportation		$404,770 32
Including Barry's allowance	$32,781 09	
Of this the United States contest	59,478 98	
Being Slaymaker $8,750 and curtailments	50,728 98	
Barry's allowances	27,143 67	85,854 62
R. is credited on these allowances	5,637 42	32,781 09
The difference of 59,000 is made up of defendant's No. 2, 18, 10.		
No. 2. If not rendered, credit United States		6,825
3. If service not rendered and assigned to Weaver		864
4. Cr. United States		8,750
Cr. R.		20,000
5. Cr. United States		7,733
6. Jury will decide		373
7. Cr. United States		1,400
8. Cr.....do		4,519
9. Cr.....do		5,823
10. Cr. R.		3,190
11 to 12. Cr. United States		796
13 to 19. Cr R.		27,143

41, 2, 3, 5. Strike cut all dr. and cr. for fines, and cr. United States with $450, settled by the parties. No. 51, 52, leave to the jury. The cr. difference being to cr. of R. in printed account need not be noticed. The disputed items stand thus, in our view: Cr. United States $29,491, cr. R. $50,858, balance in favor of R. $21,367. From which you will deduct whatever you may find to be illegal in Barry's allowances, if you find any on the principles we have laid down as to the law.

ADDITIONAL CLAIMS FOR TRANSPORTATION.

R. Claims for transportation not in account of 1839.

1. Barry allowed $6,000 by his letter, 28 December, 1831, $4,500 on cr. R. he claims the $1,500. Plaintiff says it was paid cr. item No. 66, but vide charge as jury will decide, [27 February, 1833,] if doubt, then defendant is entitled to it, as the whole $6,000 was allowed by Barry's letter. Cr. R. $1,500, extra mail, Philadelphia to New York, at $2 per day, cr. at $1, $13,680.

If jury think that the service was worth more than $1, that the former account was made out by mistake, and that R. has an equitable claim to a larger credit, they may allow it. We are not satisfied that justice was not done in the credit given, or that there was a mistake.

$2,500 claimed in former account not allowed. If jury think it just and equitable, allow so much as they think to be so.

The receipt of the amount claimed is no bar in equity, merely from omitting it at the time; the demand of $13,680 is stale, not to be favored; but if defendant has accounted for the delay, if he shows a mistake, such as in the case of Stockton and Stokes, in first claiming 25 and then 50 per cent. for increased weight, the jury may allow it in whole or part, though we do not recommend it.

Claims for money not in R.'s account—No. 160, 161, 162—not sustained. R. M. Johnson $6,000—positive oath of Johnson; contra bank account. Jury must decide; if left to us, we would credit R. $6,000. Gouverneur check $2,500, to order; guaranty don't alter its character or effect. Credit R. on the face of the check $2,500. You

will decide whether the United States have accounted for it. Commission a fair charge on $140,000, admitted for use of department, and on whatever amount you may find he negotiated for their use. You may find interest on a balance either way from the time when it ought to have been paid. You may deduct from defendant's debtor to department the loss in their negotiation.

444 to 447—four drafts—$9,000, 11th to 22d April, 1835; credit $25,000; debtor balance, $6,500.

Metropolis drafts for $13,000, in October, 1835, not charged to R.:

No. 453. Dr. to cash draft, due 15th—18th July		$4,500 00
474. ....do....17th October, 1835—90 days		4,500 00
454. ....do....20—23 July		4,500 00
476. ....do....23d October, 1835—90 days		4,500 00
457. ....do....25—28 October		3,000 00
477. ....do....28th October, 1835—90 days		3,000 00
475. ....do....20th October, 1835—90 days		1,000 00
Cr. No. 104, July 3, 1835, cash, Bank Metropolis	$8,826 75	
105, July 25, 1835....do	173 25	
		9,000 00
106, November 5, 1835...do		3,000 00

No drafts due on either day by official account, the $9,000 credit is by a discount of some other draft, or to provide for the 18—23 July.

Memorandum book at department, account with Bank Metropolis and R. do. No such account is in evidence by plaintiff at time of these drafts. Singular.

[Ru. 31.] Did Kendall accept any drafts, except renewals?

The drafts due in July for $9,000 were accepted by Barry.

The drafts due in October were accepted by Kendall, who refused to pay them for reasons vide record: recharges of Barry acceptances. The omitting to charge them to R. by Kendall, is strong evidence that they were renewals of the drafts accepted in July.

[P. M. Ord, p. 10.] General practice to discount bills for accommodation of department. Acceptances unconditional for sums less than due.

[P. 13.] R.'s drafts were renewals of former acceptances not paid at maturity.

That he performed his contracts in 1835.

Bank or the department would not suffer R. to keep the proceeds, and leave the drafts unpaid in Kendall's time. Why not now renew in January, 1836? If renewals of April drafts, R. is debtor $27,000, and credit only $11,500—balance $15,500. If only of July, he is debtor $18,000, credit $9,000—balance $9,000; so of the $3,000, debtor $6,000, credit $3,000—balance $3,000. Jury will decide.

Agency and cash account—transportation $404,700. R. charges the United States with $116,154; United States credit him the same amount, but except $6,000 in W. Bank, Philadelphia. No cash credit is given him till 30th April, 1834; and the whole amount credited in Congress account is $72,000 cash.

[P. 288, 289.] R. does not admit $5,000, not credited by R., but [Deff. No. 20, 22,] debtor to him in the Congress account, p. 134; credit United States, unless R. disproves it, $5,000.

24, 25. Not credited by R.; debtor and credit in Congress account; ditto in this account.

26, 27. Debtor and credit $79 80; not credit by R. or debtor.

28, 29. Cash, debtor and credit.

30, 31. $2,500, Page paid each draft here stated; department gave no credit.

35. $10,000, Page paid in Sch. Bank draft of R. on department.

36. $10,000 Page paid $10,000 drafts to relieve department.

37. $10,000 into bank, discounted by Page to credit of department.

38. $5,000 defendant at Sch. Bank.

39. $5,000 F. and M. Bank.

40. $10,000 department to credit of department.

47. $10,000—$62,500 paid to credit of department, credit United States $22,500.

44 and 45, debtor and creditor $9,000.

48. Debtor and creditor $3,000.

49. Cash $2,123. Jury will decide on the evidence.

53 to 60. Gouverneur positive R. had no concern in them; credit R. $15,333, if jury believe him—another ground no partner.

Metropolis Bank $14,363, credit R. $14,363. If the jury think they are renewals, otherwise if they were distinct transactions and R. received the money on both.

United States claim $3,000 for draft negotiated with Bradley in p. 1, of R's. pass-book. Not charged by United States. Don't know who paid it. Proof is on the United States. Not proved in our opinion.

STATEMENT OF ACCOUNTS IN DEPARTMENT.

Senate document, No. 342, p. 35, statement of Mr. Suter.

Debtor to amount due contractor from 1st January to 1st April, 1834 - - - - - - - -	$454,000
To amount prior to 1834 - - - -	190,000
Making the total amount - - - -	645,000
By Mr. Brown, loans $325,000, over drafts $126,599	451,000
Total debts - - - - - -	1,096,000
P. 37. Credit available, amount due from postmasters	800,000
Balance due by department (by Suter's account $10,000 more,	296,000

Credit balance $7,529, Congress account.

Debts pressing, credits scattered.

1st July, 1834, R. was debtor $301,150, creditor $308,680.

When the department was so pressed it cannot be presumed that advances were made to R. when so much was due contractors and for

loans. In October his account was balanced, as the department reported to Congress.

In this state of things R. is credited in October, 1833, cash $6,000, and no credit from that time for cash till 30th April, $20,000, and fines 30, 46, $72,000.

The claims of the parties stand thus in the printed accounts:

Difference, 1, The United States claim $47,000, R. claims $149,000, difference	$196,000
2, Plaintiff claims difference on account of transportation, say	86,000
Leaving difference in the agency account of	110,000

Both parties have stated their accounts from the other; R. has taken his from Suter's book, the Congress list, and the account. No. 3. Made out at the department by Mr. White, 350, 823, 32, in R.

No. 4. Mr. Suter and Mr. Washington. No. 5. Varying in form, not in result.

No. 6. The drafts will be found to correspond with Mr. Lipscomb's statement.

The result of plaintiff's account is debtor 613, creditor 466, balance $47,000.

Of defendant's is debtor $520,000, creditor $372,000 balance $149,-000.

No. 7. The credits in plaintiff's account are,

Transportation	$319,000	
Drafts and cash for use of defendant	141,000	
Other credits	5,600	
		466,000

From this general view of the accounts you see a broad field before you. So far as any principle of law bear upon the accounts generally, we have stated them to you on Saturday, and shall do so now, as to items, so far as we can recollect them; so when we have an opinion on the weight of evidence. But in the immense mass of evidence, it is impossible for me to separate and apply it under the circumstances of this case. None has been rejected, but the record of the suit United States *vs.* Governeur. Much would have been rejected if objections had been made. Then we could have looked to its competency as was our duty, you would judge of its sufficiency; but when counsel did not object it was not for us. Hence you must judge of its sufficiency to make out a debtor and creditor without our aid as to its relevancy.

We would gladly share the responsibility with you, but cannot. You have a severe task, and will execute it faithfully. In making up your verdict do not find for the defendant one dollar less than is due him, because the United States is a party, nor one dollar more on account of his changed situation.

Loughborough's Letter—Auditor's detailed statement.

The jury empanneled, having returned their verdict certifying a balance in favor of the defendant, to the amount of $188,496 06, the counsel for the United States moved the court for a new trial, and for cause stated:

1st. The jury have found a verdict against the evidence, and the charge of the court, in allowing the defendant credit for work and services not performed by him.

2d. The jury have found a verdict against evidence and the charge

of the court, in disregarding the effect of the account rendered by defendant, on the 31st January, 1839.

3d. The jury have found a verdict in which they have not charged the defendant with money proved to have been paid by the Post Office Department to him, or to his order, and for his use and account.

4th. The jury have allowed the defendant credit for items not established on his part by evidence sufficient to entitle him to a verdict.

5th. The jury have found a verdict, the propriety of which cannot be ascertained by any standard furnished by the evidence in the cause.

6th. The jury have disregarded the directions of the court as to interest.

7th. The jury have allowed the defendant more than legal interest.

8th. The jury have opened the accounts prior to 1832, to allow interest on undisputed items, closed and settled, and no longer the subjects of controversy.

9th. The verdict of the jury in favor of the defendant, is far more than in any rational view of the evidence he was entitled to claim.

10th. That after the jury was charged by the court, they were allowed to separate and again convened by adjournments whilst they were considering their verdict.

11th. The counsel of the plaintiff reserve the privilege of adding such reasons as may be permitted by the court, under the motion made on the 6th part, for leave to except to the ruling of the court on questions of evidence, and matters of law embraced in the charge of the court, without such motion being deemed a waiver of the exceptions.

12th. The verdict was against law and evidence, and the charge of the court.

JOHN M. READ,
JOHN CADWALLADER.
For plaintiff.

After a through argument upon the points submitted as ground for a new trial, the court delivered the following opinion, overruling the motion.

THE UNITED STATES *vs.* JAMES REESIDE ON MOTION FOR A NEW TRIAL.

Among the reasons assigned for a new trial in this case, there is one which will be decisive, if well taken, without adverting to those which are founded on the merits of the verdict: It is this, and true in fact, that the court permitted the jury to separate after the charge was given, and to meet from day to day on their own adjournment, while they were deliberating on their verdict.

That this was a departure from the ordinary rules and practice of courts in jury trials, cannot be denied, but it seemed to my late lamented colleague and myself, that it would be oppressive on the jury, without conducing to the just settlement of the matters in controversy, but rather calculated to lead to a hurried lumping verdict, to hold them to one continuous session on a cause which had occupied the court incessantly for more than five weeks.

The cause was most complicated as well on points of law as of fact, the accounts between the parties were large in amount, the charges in each exceeding half a million of dollars, the plaintiff claiming a balance of 47,000 dollars, and the defendant claiming a balance of 270,000; both accounts containing items many of which would separately present important questions, to be settled only by great deliberation, and the most attentive examination of a great mass of oral and written evidence. Had the first been a bill in equity, or an action of account vendee, no masters or auditors could have stated an account satisfactory to themselves, without many days of incessant labor, and it is not to be doubted that the health of the jurors would have been in much danger if they had been kept in their room for the whole time necessary to adjust the account as it ought to have been settled.

On a full consideration of these and other circumstances, we had come to the conclusion, that it was indispensable to a proper consideration of the case to permit the jury to separate, we did not ask the consent of the counsel of either party, well knowing that neither would be willing to express their dissent, lest it might have an unfavorable effect on the case, and we had determined on our course whether the counsel assented or not. We accordingly stated to the jury, that they might adjourn from time to time, giving them the proper caution, and declared that we should not grant a new trial on that ground, to which no objection was made by either party; and it is not now urged by any other reason than the want of power in the court to make the order without the consent of counsel.

While we fully admit the existence of the general rule, not to permit the jury to separate after the charge is given, before they agree on their verdict, we cannot doubt that it is a matter of discretion with the court in civil cases under peculiar circumstances, than which none could be more imperative than such as attended the one now before us. There are few general rules without exception; those which apply to jury trials have been adopted by courts as best calculated to further the ends of justice, without any definite provision by any positive law, as to the mode of proceeding after the jury as been empanneled, and if there is any matter in which there ought to be a discretionary power in the court it is in the treatment of the jury while deliberating on their verdict. The oath of the officer who attends them is always qualified by the clause, "unless with the leave of the court," which shows that there is some discretion, and unless its exercise is limited by some unbending rule of law, it must be applied according to the varied emergencies which arise. It is a duty sufficiently onerous on a jury in an ordinary case, to confine them till they agree; but it would be oppressive to do so in such a case as this was, unless some rigid rule of law had taken from us all discretion on the subject. We should have felt ourselves justly exposed to censure, had we endeavored to enforce on them the prompt rendition of a verdict when we felt fully satisfied, that no men could have finished the case in one session, had they undertaken it as masters or auditors, still less the men who were already fatigued with five weeks constant devotion to the case. We cannot therefore sustain this objection to the verdict.

The other objections to the verdict may be considered together, as presenting it to be contrary to the law, the evidence, the charge of the

ciency of which the jury were the proper judges. When, in our opinion, a claim was a naked one, we did not hesitate to advise its rejection, but when it was doubtful, it was our duty to refer it to their discretion, so when it depended on the credibility of witnesses, or the evidence was contradictory, which was the case as to many of the items in controversy, making their admission or rejection depend on probability rather than fact, or balancing opinions rather than on certain conviction. Many of the transactions were old; all took place before the destruction of the post office building by fire, in December, 1836, in which most of the papers on which they arose are destroyed, the contents of some of which could not be supplied by any secondary proof, and its other very imperfectly, and neither party had made out formal accounts for a settlement previous to the fire, nor for more than two years afterwards, when these exhibited at the trial were made out. In 1834 and 1835, the accounts and contracts of the defendant with the Post Office Department, as well as a contractor as their special agent to raise money, were called for by both Houses of Congress, submitted to committees who made voluminous reports of the varied transactions, exhibiting the conflicting opinions of the members in the conclusions of their majority and minority reports, which terminated in no practical results, except the passage of the two acts of 1836, which are noticed in detail in the charge to the jury. At that time the officers of the department were wholly unable to make a correct statement of the defendant's account, while all the papers relating to it were in perfect preservation, and their recollection of the transactions more perfect than it can have been since, and those under whose direction they took place remained in their respective station. That the accounts should become more confused, more difficult of adjustment, and more open to contestation, by the lapse of time, the death of witnesses, the loss of papers, the change of officers, and that a jury in 1841 should have as much at least, if not much more embarassment, in the final settlement of the accounts, than the officers of government who directed and controlled every transaction connected with them, while every thing was fresh in their memory, had in 1844–5, in stating them is most certain.

The great difficulty, from that time up to the trial, was in ascertaining how much of the money which passed through the hands of the defendant was applicable to his contracts, extra services, and allowances, relating to the transportation of the mails, and how much went to supply the wants of the department for other purposes. The direct receipts of the money applied to either object was only in small proportions, it was chiefly raised by the drafts of Reeside on the department, at from two to six months, according to circumstances, accepted by the treasurer, and negotiated as they could be, with much more regard to the emergency than to the terms, which were on some occasions most rankly usurious.

No entry of these drafts was made on the books of the department when they were accepted and issued; there was no account kept of bills payable, they were entered only when paid, and then charged to Reeside on account of transportation, but their proceeds passed to his credit, when it was ascertained that they had been applied to the use of the department.

The amount of such drafts so charged was about $470,000, though many more were drawn, accepted, issued and negotiated, some without going into his hands, and others delivered by him to other agents for their negotiation, who did not appear to have rendered any account of their transactions, and as to some batches of drafts, the department as late as 1836, were wholly unable to ascertain to whom they were chargeable. Reeside was credited $441,000, for money applied to the use of the department by means of these drafts, but he claimed a much larger credit, and contested the propriety of many of the charges of drafts to his account, for which he denied any accountability, he also claimed credit for other sums directly advanced by him out of his private funds, which were contested by the plaintiff. There was another important class of claims by both parties, which were the subject of much controversy, the United States claiming to be refunded a large sum allowed by the order of the Postmaster General, as was alleged contrary to law, the defendant also objected to the disallowance of several claims of services as contractor, and made claim for credit on items of special service, other than those which had been allowed, whereby the case becomes one of unprecedented complexity. With all the time and labor which could be devoted to the cause, as well out as in court, the judges could come to no conclusion other than that a balance was justly due to the defendant, but what was the true amount we could not say, and soon after the charge had been given, no estimate had been made by us as to the result, on the items on which an opinion had been expressed to the jury by either of the judges. On the opening of the present argument, such an estimate was presented by one of the counsels of the United States, by which it appears that according to the opinion of Judge Hopkinton, there would be due to the defendant a balance exceeding $48,000, and to that of the presiding judge say $65,000, exclusive of interest, commission, discount, &c., inclusive also of many large items of claim to a credit, and objections to charges made by the defendant, on which neither judge gave any opinion, but which were submitted generally to the jury on the law and the evidence which was applicable to them. To this extent no objection is now made to the verdict, as inconsistent with the charge of the court, but it is considered by the plaintiff's counsel as the maximum beyond which the jury could not go, with the addition of interest, commission, &c., without running counter to the opinion of the court and the facts in evidence. But we cannot concur in that view of the case, the jury were at liberty to draw their own conclusions from the evidence on the matter not noticed by the court, the reasons of the omission in the charge were given, and they were directed to examine each contested item and decide on its merits, according to their own opinions, where we have given none.

The supplemental accounts of the defendant were very loose and indefinite, referring to many claims which were unsupported by any proof, and are abandoned by his counsel at the trial; few were relied on, and those were not large in amount, the largest were rejected by the court as wholly inadmissible, and three items amounting to $10,000, were distinctly left to the jury, and are those embraced in the estimate referred to, to which no specific objections are now made.

Made out in 1839 by

Generally speaking, the contested items in the accounts of both parties were supported by some evidence, conducing to prove them, to some extent at least, had they been subjects of distinct actions, and a demurrer put into the evidence, there are few as to which the judgment would not have been against the party demurring; consequently the evidence was competent for the jury to consider and act upon. Whether it was so or not, was a question of law for the court, but if it was competent in law, its sufficience was a question of fact for the jury inclusively, any opinion given by the court would only be as advice, not as instruction, or a direction which was to control their own view. Few, if any, points were raised as to the competency of the evidence, as was remarked to the jury, the pressure of the case on both sides was on the effect and sufficiency for the purpose for which it was adduced, so that the main controversy was on the facts, and not on the admissibility of the testimony from which they were to be extracted by the jury; a preliminary objection might have narrowed the field of their inquiry, but where the evidence was before them, it could be considered only with a reference to its sufficiency. On the subject of interest the jury were at liberty to strike a balance due the defendant on his agency account, when his agency ceased in the spring of 1835, and on his contracts at their expiration in January, 1836, or to credit him with the separate items as they became due and justly payable, and then to any interest on to the trial; as an item in that balance they also might credit the defendant with a commission on the money received, raised, and paid as agent, proportionate to his services and attendant expenses, the sum so claimed in his supplemental account was $12,500, of the reasonableness of which the jury were the proper judges.

They could also give a credit or deduct from the charges of drafts drawn by him on the department, the interest for the time between their date and maturity, with whatever discount or other direct or incidental deductions attended their negotiations for which no charge appears in any account, and it cannot be denied that, in point of law, they could allow or disallow a credit or charge of any item where there was such evidence to support a credit or rebut a charge as would stand the test of a demurrer to its sufficiency.

Taking this as the true rule by which to measure the legitimate power of a jury, I am prepared to say that, after a deliberate review of the evidence in this case as it bears on the accounts of the parties in the prominent items of controversy, the balance which they have certified is not justifiable by what was in proof before them, nor that they might not have found a still larger amount, without disregarding one charge, or the principles of law as to the competency of the proof. At the same time I cannot say that I am convinced affirmatively that the sum found is justly due, or that a larger or smaller sum would not better comport with the evidence; the judicial eye looks more to the competency than the sufficiency of the proof of a fact, and the judicial mind is not accustomed to weigh evidence or decide on the credibility of witnesses, my attention has consequently been more directed to what the jury could lawfully do than what I would deem right if placed in their position. If they had stated an account in detail, it would have been easy to ascertain the correctness of their result; as

they have not done it, it must be left to conjecture what items compassed their verdict, and its conformity to the justice of the whole case must of necessity depend on general consideration of the various and most complicated subjects of controversy.

It is a good ground for a new trial, that the court are convinced that injustice is done by the verdict, but it may be a very different question whether it ought to be granted because they are not satisfied that justice has been done. In the first case I should not hesitate, in the latter I should pause and inquire whether a nearer approach to my opinion would be the result of another trial, or whether it would remove doubts existing after the first. There is no subject on which there is a broader field for the exercise of sound judicial discretion than in granting or refusing new trials. On the one hand the rights of juries must be respected, by giving proper weight to their verdict on controverted facts, and especially in doubtful cases on questions more appropriate to their powers and duties than those of the court; on the other hand their proceedings must be kept under the supervision of the judges, as to the law and the evidence to which it is applicable. In this case I have come to the conclusion that the verdict rendered is one which, under all the circumstances of the case, ought not to be disturbed without being satisfied affirmatively that full justice has been done between the parties, or negatively that injustice has been done. I am nevertheless satisfied that the result approximates as near to a correct balance of accounts as could reasonably be expected on another trial. Both parties appeared to have produced all the testimony which was accessible to them. There is no assurance that any new light can be thrown on the transactions in which the controversy began. It has been long, expensive, and harrassing. There is no reasonable ground for believing that its continuance here would lead to a result satisfactory to either party, or terminate in a manner more conducive to the ends of justice than the present has done. It cannot be expected that a better or more impartial jury could be selected—there certainly cannot be one more patient or attentive than they were. A case of great difficulty and complexity was before them, they examined it deliberately, and agreed on a result which cannot be attributed to passion, prejudice, or any improper bias. Before setting it aside there should be a clear and full conviction that some substantial reason for a new trial has been made apparent, the burden of which is on the party objecting to it, and in my opinion has not been made out. Every presumption should be in favor of a verdict in a doubtful case, more particularly when the subject of controversy is of such a nature as this, and so entangled by unusual circumstances of embarrassment, in adjusting accounts of long standing, complicated transactions of which one party kept no correct books of entry and the other kept none. Assuming that the estimate referred to, of the result of the verdict according to the opinion expressed by the judges to the jury, to be truly made, there were other items which were left to them, either specifically or generally, which they might allow to the defendant, to amount sufficient with the addition of interest to make up the balance found, and have found a larger sum without transcending the limits prescribed by our charge, the rules of law, or deciding on any item without such evidence as would have supported it on a de-

murrer. These views of the case would alone suffice to induce me not to grant a new trial, yet there are others which have not been overlooked. All transactions between the parties have ceased for more than six years. I am fully satisfied that a large balance is justly due to the defendant. Any judgment on the verdict is subject to a writ of error on the exceptions taken at the trial which will cause some, perhaps, much delay. Should it be reversed by the Supreme Court, there must be a new trial of the whole case. If affirmed it will only be operative in law as a judgment for the defendant, to preclude the United States from afterwards claiming a balance; but the court can take no further steps to enforce the payment of the balance found due by them, as they could do in a similar case between individuals. The defendant must appeal to another tribunal for ultimate redress, where the whole merits of his claim may be re-examined; whether it will or ought to be done does not comport with my duty to say, but inasmuch as Congress may act on this subject according to their own discretion, it is evident that the time may be very distant when the controversy may be terminated, whatever may be the ultimate decision of future juries of this or the Supreme Court; on the whole, my opinion is, that the motion for a new trial be overruled and judgment rendered in the verdict.

Accounts of James Reeside with the Post Office Department.

FIRST ACCOUNT.

POST OFFICE DEPARTMENT, *To James Reeside*, DR.

1832.			
1.—Dec. 31.	To discount, time and grace, 63 days, and ½ per cent. exchange charged by bank for collection on $6,000 draft at 60 days, deposited with this sum, making $6,000, Nov. 30, 1832, in Western Bank, Philadelphia - -		$93 00
1833.			
2.—Jan. 17.	Cash remitted the department, per Richard M. Johnson, by letter - -		6,000 00
3.—Mar. 30.	Sundry postmasters' drafts returned, per John Suter's book - - -		218 27
4.	Running express mail daily, or double daily, from Philadelphia to New York, started at a moment's warning, with two horses each way, from the 30th of January to 8th of March, 1833; 38 trips each way, double express on account of the weight, is 152 trips, 90 miles each; finding riders and paying tolls, subsistence of riders and horses, defraying all expenses, at $2 per mile, allowed $13,680, half price		27,360 00
5.	This sum allowed extra, for increased expenses of starting suddenly, loss on horses, &c. - - - - - -		2,500 00

6.—Mar. 30.	Difference in mail-guards from New York to New Haven, allowed suspended; this sum error in calling two years but 579 days or trips, instead of 730 trips or days, short 151 trips at $6		$906 00
7.	Difference in 70 price trips transporting the mail by fast express, in four-horse post coaches from New York to New Haven, (Hartford,) to connect with the line when left by steamboats; occasioned by the delay, in part, of department's order in Philadelphia to wait the arrival of the southern mail. The trips allowed in number, but error as to price, only $10 per trip; $700 credited, instead of a reasonable		
8.	price. Allowed for similar service between New York and Philadelphia, 90 miles, $150; same ratio to New Haven, 75 miles, ($80 50) - -		8,027 44
9.—Apr. 18.	To draft returned per John Suter's letter, accepted by the Postmaster General, to be signed in place of one for same amount, returned by you in consequence of error in date - -		2,500 00
10.—May 17.	To two sums, $2,000 and $431 25, carried out $3,431 25, per John Suter's book. Difference - - - -		1,000 00
11. 18.	Cash remitted by Dr. George McClelland		12,000 00
12.	To error; this sum charged "cash," is so much allowed Horton in lieu of same amount. Postmaster's draft returned, charged when delivered -		225 27
13.—July 15.	To cash drafts charged short in J. Suter's book, used for department - -		8,000 00
13.—Aug. 1.	To cash drafts charged short in J. Suter's book, used for department - -		7,000 00
14.	To extra for detention in New York to distribute foreign mails, one to two hours required to gain the speed; two extra teams allowed by Mr. Barry, endorsed on James Reeside's letter, Dec. 28th, 1831; allow $4,500. The residue of the claim "allowed" is reserved for future consideration. "Allow the remaining $1,500," in Mr. Barry's hardwriting, making ["Allowed"] - - - -		6,000 00
15.—Oct. 26.	To cash paid draft due at Schuylkill Bank, Feb. 25, 1834, for benefit of department, mem. book 23, 26, -		4,000 00

16.—Oct. 26. To cash remitted to O. B. Browne, Feb. 4, 1833, avails of drafts, discounts, and exchange, { $49 50 / 2,950 50 } $3,000 00

1834.

16.—Feb. 25. To error this sum—its accounts, charged the 28th Feb., 1834, charged "cash," is sums transmitted from New York to Washington. One account makes the entry all cash, thus:

February 28th, cash,	$4,000 00
	4,000 00
	3,000 00
	4,000 00
	4,000 00
	4,000 00
	3,000 00
	3,000 00
	2,983 26
	31,983 26

Department's other account charges the same, thus:

Cash, Bank of Metropolis,	$4,000 00	
Seventh Ward Bank, N.Y.,	7,000 00	
	4,000 00	
	13,000 00	
Patriotic Bank,	3,983 26	
		31,983 26

Entered also short in John Suter's book, thus:

Feb. 25.	By 4 drafts of $4,000	$16,000 00	
	By 3 drafts of 3,000	9,000 00	
	By 1 draft of 2,983 26,	2,983 26	
		27,983 26	

17.—May 5. To four drafts, each $1,000, not paid, charged short J. Suter's book, not paid, is error, being both charged and paid; discounted to pay draft of $4,000, due 25–28 February, 1834, at Schuylkill Bank - - - 4,000 00

18. To cash draft entered short in John Suter's book, as was his habit, when for the use of the department, of 5th May, 1834 - - - - - 3,000 00

19. 10. Cash do. of 10th May, 1834 - - 5,000 00

20. 13. Error, this sum thrice charged, one account:

May 13.	Cash, Manhattan Bank	$5,000 00	
24.	Bank of Ithaca	1,200 00	

		Cash, Western Bank, Phila.	$1,000 00	
		Concord Bank, N. H.	1,500 00	
		Boston Bank	1,300 00	
	May 28.	Manhattan Bank	5,000 00	
			15,000 00	
		Only credited	5,000 00	
			Differ	$10,000 00
21.		To error draft charged paid by Jas. Page, the 7th inst., dated the 24th April, for - - - - - -		1,000 00
22.		To errors draft same date, paid the 22d May, for the benefit of department, both drafts - - - - - -		1,000 00
23.	15.	To cash three drafts, charged short John Suter's book, used for benefit of department, sent to New York, $5,000 each - - - - - -		15,000 00
24.	20.	To cash three drafts used for benefit of department, $5,000 each - -		15,000 00
25.	25.	To cash two drafts used for benefit of department, $5,000 each - -		10,000 00
		To cash four drafts used for the benefit of department, $2,500 each - -		10,000 00
26.		To error, cash; draft should have been dated 15th of March, 1834; one of the above returned for error in the date, another sent to New York in lieu of it; yet the first mis-dated draft, which was returned, is charged in John Suter's book, and from no particulars being given, but all charged "cash," whether drafts or other things may be charged twice, and be one of those cash items of $5,000 - -		5,000 00
27.—Aug.	1.	To cash, Western Bank - - -		9,895 00
28.		To cash amount allowed, report's account of June 3, 1834, two drafts, $5,000 each - - - - - -		10,000 00
29.—Aug.	13.	Drafts due 13th and 15th August, 1834, sent to New York, and by S. L. Gouverneur used for benefit of department, part of $25,550; amount of drafts all used by him for the benefit of the department - - - - -		2,000 00
1834.				
30.—Aug.	22.	To error of this date, its accounts charge "cash," this sum - - - -		20,000 00
31.—Sept.	20.	To drafts dated the 20th September, 1834, at thirty days, sent James Hamilton, New York, agent for depart-		

		ment, and there used for department's benefit - - - - - - -		$10,000 00
32.—Sept.	20.	To drafts of 15th May, sent do., and used for benefit of department - -		20,000 00
33.	26.	To cash check, sent S. L. Gouverneur, agent for department - - -		2,500 00
34.		To cash check, No. 258, on Schuylkill Bank, for use of department - -		4,000 00
35.		To cash deposited in Western Bank, for use of department - - - -		9,843 30
36.		To cash remitted the department, proceeds draft discounted by Patterson Bank, and discount charged paid for - - - - -	$10,000 00	
		Do. draft of $5,000, by Levis - - - - -	5,000 00	
		Do. drafts at Girard Bank for - - - - -	5,000 00	
				20,000 00
37.—Nov.	10.	To error its account, this amount - -		2,123 60
38.	17.	To cash deposited in Western Bank, for use of the department - - -		9,848 33
39.		To cash proceeds of draft of October 28, 1834, interest, &c. - - - - -		10,000 00
40.		To cash proceeds of draft of November 14, 1834, interest, &c. - - -		10,000 00
41.	17.	To drafts sent Samuel L. Gouverneur, agent of the department, New York, and by him used for benefit of department, transmitted to department by said Gouverneur, as vouchers, and on his trial, when called for, for use at his trial, were refused him:		
		2 drafts of May 25, each $2,500 - - - - -	$5,000 00	
		1 draft of April 24, erroneously supposed for my use,	1,500 00	
		1 draft, May 25, 1834 -	1,000 00	
		1 do. August 15 - -	2,000 00	
		1 do. dated April 20, at 30 days - - - -	10,000 00	
		1 draft, dated 23d October at 36 days - - -	5,000 00	
		1 draft, dated 24th February, due 5th May - -	1,000 00	
				25,500 00
42.—Nov.	17.	To my expenses, collecting and attempting to collect many thousand dollars of postmaster's drafts, handed me as cash, (one tour west, cost $100 expenses,) say for the whole - - -		275 00

1835.		
Jan. 27.	To cash remitted O. B. Brown, treasurer Post Office Department, this day -	$20,000 00
43.—Jan. 27.	To drafts sent Barnabas Bates, New York, agent of department, and used for the benefit of department - -	5,000 00
44.—Apr. 22.	To check on Schuylkill Bank, dated April 22, 1835, in favor of John Suter or order, endorsed by John Suter, G. Thomas, and W. D. Lewis, remitted to Washington for the use of the department - - - - - -	2,500 00
45.—May	To drafts of January 6, 1835, used in New York by Mr. Gouverneur or Barnabas Bates, agent for the department, for its use and benefit - - -	5,000 00
46.—Dec. 31.	To my services, risks, and expenses, stage and steamboat fare, carriage-hire and traveling expenses, night and day—from Philadelphia to Baltimore, Washington, Patterson, New York, Providence, Boston, Pittsburg, and elsewhere, to raise money for the Post Office Department, on my own and its paper endorsed by self and friends, and real estate pledged as security; the risk of department's charging and not crediting more than this sum, which includes great expenses; two and a half per cent. on $500,000,	12,500 00
47.—Dec. 31.	To transporting way-mail (Page's 2d mail) from Philadelphia to New York, from 1st May, 1833, to 31st December, 1835, two years eight months, omitted, at $5,125 per annum - - -	13,666 67
48.	To mail-guards from Philadelphia to New York, from 1st April to 31st December, 1835, 275 trips, half fare, *a* $6	1,650 00
49.	To transporting mail from Baltimore to Chambersburg, increased speed one hour at one end, and two hours at the other end of the route, by order of the department, from September 12, 1832, to December 31, 1835, three years two months and twenty-two days, in ratio of former increase of three hours' speed from fast to faster, $3,562 62 per annum. The allowance for changes on this route of "adequate remuneration," in the language of contracts, is claimed losses, &c., this amount - - - - - - -	11,499 42

50.—Dec. 31.	To error difference short credit department's accounts transporting the mails from Athens to Milledgeville - -	$1,625 59
51.	Do. do. do. Warrenton to Decatur - - - - - - -	1,875 68
52.	To transporting the mail from Warrenton by Powelton to Sparta - -	1,139 42
53.	To error reckoning the time route from Philadelphia to Norristown - -	1 88
54.	To error reckoning the time from Blair's Gap to Bedford and Cumberland, when time agrees - - - - - -	58 09
55.	To error of department's account of 24th April, 1815, used by S. L. Gouverneur, New York - - - - - -	1,500 00
56.—Dec. 31.	Error cash the 8th May, 1834 - -	6,000 00
57.	Do. do. 17th May, 1834 - -	8,000 00
		457,815 22

Rendered March 24, 1840.

SECOND ACCOUNT.

POST OFFICE DEPARTMENT, *To James Reeside*, DR.

1832.		
58.—Jan. 30.	To D. Dorrance's draft, 1st April, 1832,	$767 50
59.	To William Hammond's draft, 27th December, 1831 - - - - - -	350 00
60.—Oct. 16.	To David Dorrance's draft, 1st July, 1832 - - - - - - -	855 00
61.	Do. do. 2d January, 1833 -	860 00
62.	Do. do. 1st October, 1832 -	860 00
63.—Dec. 31.	To George Lehmer's draft returned 2d July, 1832 - - - - -	55 00
1833.		
64.—Feb. 27.	To extra expense in keeping three extra teams between New York and Philadelphia, from 1st January to 31st December, 1832 - - - - -	3,000 00
65.	To carrying from New York to Philadelphia and back, all the large mail bags, &c., from 1st January to 30th December, 1832 - - - - -	520 00
66.	To sending southern mail to New York, four trips, at $150 per trip - -	600 00
67.	To penalties remitted - - - -	490 00
68.	To mail guards both ways between New York and Philadelphia, from 1st January, to December 31, 1832 - -	2,196 00

69.—Oct. 11.	To cash in Western Bank of Philadelphia - - - - - - - -	$6,000 00
1834.		
70.—April 1.	To running a daily express mail between New York and Philadelphia by special order from the Postmaster General, from 30th January, to 8th March, 1833 - - - - - - - -	13,680 00
71.—Ap'l 28.	To sundry drafts returned unpaid -	69 57
72.—Ap'l 30.	To cash at Western Bank of Philadelphia	20,000 00
73.	To drafts charged to account of James Reeside, but delivered to Mr. Bates, and by him negotiated for the use of the department, 8th January, 1834, due 5th and 8th May - - - -	4,000 00
	To one draft charged in account, delivered to Mr. Bates - - - - - -	2,000 00
	To one draft 8th January, 1834, due 10th and 13th May - - - - - -	
	To one draft 8th January, 1834, due 5th and 8th May - - - - -	2,000 00
	To two drafts, each $5,000, dated June, 1834, due 1st and 4th August - -	10,000 00
	To one draft, due 5th and 8th May -	3,000 00
	To check on Manhattan Bank, New York, paid over to Mr. Gouverneur's use of department - - - - -	10,000 00
	To check No. 1863, on Manhattan Bank	4,432 44
	To check No. 1864, on Manhattan Bank, May 13 - - - - - - - -	5,567 56
	To check No. 1959, on Manhattan Bank, paid May 24, Bank of Ithaca - -	1,200 00
	To check No. 1960, on Manhattan Bank, on do., Western Bank - - -	1,000 00
	To check No. 1961, on do., Concord Bank, New Hampshire - - -	1,500 00
	To check No. 1962, on do., Boston, Massachusetts - - - - -	1,300 00
74.—Sep. 20.	To cash - - - - - - - -	10,000 00
75.—Oct. 31.	To cash - - - - - - - -	10,000 00
76.	To draft on C. Felton, 1st January, 1834, returned unpaid - - -	186 69
77.—Nov. 13.	To draft on Wm. D. Sterrett, do., do. -	210 00
78.—Dec. 11.	To draft on J. H. Gwynn, do., do. -	25 00
79.	To draft on J. Goodin or Godwin, do. -	20 00
80.—Nov. 17.	To cash - - - - - - - -	10,000 00
1835.		
81.—Feb. 14.	To cash - - - - - - - -	10,000 00
82.—M'ch 31.	To draft, Humrickhouse - - -	250 00
83.—Ap'l 18.	To cash, $2,500; (21st,) cash, $10,000	12,500 00
84.—Ap'l 28.	To cash - - - - - - - -	5,000 00

85.—Ap'l 28.	To James Alexander, for amount -	$50 00
86.—July 3.	To cash - - - - - - -	8,826 75
87.—July 25.	To cash - - - - - - -	178 25
88.—Nov. 5.	To cash - - - - - - -	3,000 00
89.—Nov. 25.	To services performed under contract. See statement A - - - - - -	350,823 32
90.	Post office or master's draft returned -	121 95
91.	Do. do. unpaid -	675 18
92.	To allowed for mail guards, from New York to Philadelphia, from 1st January, 1828, to December 31st, 1831, 1460 trips, at $6 - - - - -	8,760 00
93.	To allowance do., 1st January to 31st March, 1835, 90 trips, at $6 - -	540 00
94.	To allowance do., same time, from New York to (New Haven) Hartford, 90 trips, at $6 - - - - - -	540 00
95.	To allowance do., New York to Philadelphia, from January 1st, 1833, to December 31st, 1834, 730 trips, at $6	4,380 00
96.	To do., do., New York to (New Haven) Hartford, from 1st January, 1833, to December 31st, 1834, (730) 579 trips, at $6 - - - - - - -	3,474 00
97.	To do., three extra teams between New York and New Haven, from 1st June, 1833, to 31st December, 1834, at $1,250 per annnm per team - -	5,937 50
98.	To do., 70 extra trips by land, owing to detention at New York for ship letters, at $10 - - - - - - -	700 00
99.	To do., running four miles round, on account of railroad, from June, 1833,	
100.	to 1st November, 1834—one year and five months - - - - -	1,380 00
101.	To do., nine miles round, from 1st November, 1834, to August 1st, 1835 -	1,080 00
102.	To do., running (28½) (21½) teams from Warrenton, by Powelton, to Sparta, at $1,250 per team, from 1st February, 1833, to 31st December, 1834 - -	5,989 59
	To do. error cash, December, 1832 -	577 83
		551,524 13

Rendered March 27, 1840.

THIRD ACCOUNT.

POST OFFICE DEPARTMENT, *To James Reeside*, DR.

	1835.		
104.—Dec.	31.	To cash, error official account, and department's accounts entered short on John Suter's book, used for benefit of department, draft, May 5, 1834,	$4,000 00
105.		To draft of same date, - - -	2,000 00
106.		To draft. May 10, 1834, - - -	2,000 00
107.		Do. 10, - - - - -	3,000 00
108.		Do. 15, - - - - -	4,000 00
109.		Do. 15, - - - - -	2,000 00
110.		Do. 20, - - - - -	3,000 00
111.		Do. 20, - - - - -	2,000 00
112.		Do. 20, - - - - -	1,783 26
113.		To cash proceeds of sundry drafts drawn by James Reeside on the department, amounting to this sum sent Barnaby Bates, agent of the department at New York, and by him used for the benefit of the department, - -	21,000 00
			44,783 26

Rendered April 2, 1840.

FOURTH ACCOUNT.

POST OFFICE DEPARTMENT, *To James Reeside*, DR.

	1834.		
114.—May	13.	To cash error, charge of $3,000 and $2,000, official account - - -	$5,000 00
	1833.		
115.—Nov.	7.	Do. do. this sum do. do.	4,000 00
116. "	18.	Do. do. this sum do. do.	3,000 00
117.—Dec.	16.	Do. do. this sum do. do.	3,000 00
	1834.		
118.—Jan.	4.	To cash error these four entries, from Manhattan Bank account - -	7,000 00
119.—Feb.	22.	To cash error this sum, 7th Ward Bank account, - - - -	3,000 00
120.	28.	Do. do. do. do.	4,000 00
121.		Do. do. do. do.	13,000 00
122.		Do. do. do. do.	7,000 00
123.—Ap'l	18.	Do. certificate of deposit in Bank of Metropolis - - - -	2,500 00
124.	28.	To cash certificate of deposit in Western Bank of Philadelphia - -	5,000 00
125.—May	5.	To cash error deposit of May 5, 1834, used for department's benefit, -	1,000 00

126.—May	8.	To charge Saving's Bank, Louisville, Kentucky, official account, - -	$1,500 00
127.	8.	To Union Bank, Nashville, $1,500, and Commonwealth Bank, Boston, $1,000, official account, - -	2,500 00
128.	24.	To cash error United States Bank, Mobile, official account, - - -	2,500 00
129.	28.	To cash error Manhattan Bank, N. J., official account, - - -	5,000 00
130.—July	18.	To cash $2,833, error United States Bank, Boston, official account, -	4,000 00
131.—Nov.	18.	To cash 1833, do. Commonwealth Bank, Boston, official account, - -	3,000 00
132.—Aug.	4.	To cash draft this sum, used in New York, for benefit of department, -	10,000 00
133.		To penalties remitted, Feb. 12, 1834, -	600 00
134.		To Postmaster's drafts on hand, -	516 58
135.		To errors, fines, New York contract,	
136.		since transfer to Camden and Amboy Railroad Company, - - -	150 00
137.—August	4.	To cash draft, 5—7 May, 1834 -	1,000 00
138.		To cash draft, 25—28 May, 1834; 2 drafts - - - -	5,000 00
139.		To cash draft, 25 May, 1834 -	1,000 00
140.		To cash draft, August 15—18, 1834	2,000 00
141.		To cash draft, October 20—23, 1834	10,000 00
142.		To cash draft, Oct'r 23, or Nov'r 23	5,000 00
		Error these drafts used for department, in New York.	
143.		Error this sum, said to be improperly credited, mail Pottsville to Mauch Chunk, settled some time previous to commencement of this account, with a previous Postmaster General - - - - -	525 00
1835.			
144.—Feb'y	14.	To cash, certificate of deposite in Western Bank, Philadelphia -	9,898 33
145.		To 2 drafts, dated January 6, 1835, sent James Page, P. M., Philadelphia, for use of the department:	
		One payable April 10, 1835, for -	2,500 00
		One payable April 19, 1835, for -	1,500 00
146.		To error, following drafts, charged as paid by James Page, P. M., Philadelphia, which were for use of department:	
		Cash, August 15, 1834, draft dated April 9, 1834 - - -	1,000 00

147.—Feb. 14.	To cash, Sept. 10, 1834, draft same date		$1,500 00
148.	To cash, Dec. 18, 1834, do. September 12, 1834		5,000 00
149.	To cash, January 12, 1834, do. October 28, 1834		10,000 00
150.	To cash, February 13, 1835, 4 drafts, dated June 17, each 2,500		10,000 00
151. *	To cash, February 16, 1835, 1 draft, dated November 14		10,000 00
152.	To cash, April 9, 1835, 1 draft, dated January 6, 1835		5,000 00
153.	To cash, February 18, 1835, 1 draft, dated November 15, 1834		5,000 00
154.	To cash, April 29, 1835		10,000 00
155.	To cash, September 23, 1835, 1 draft, dated April 18, due Sept'r 1—4		10,000 00
156.—Feb'y 14.	To cash draft, dated June 28, 1835, due 15—18 October, error		4,500 00
157.	To cash draft		4,500 00
158.	To cash draft, error, due about same time		3,000 00
159.	To error, its account, following sums claimed by Samuel L. Gouverneur, late postmaster, New York, as paid to said Reeside for account of Post Office Department, and allowed on trial of his case, at April term, 1839, of the circuit court of the United States for the southern district of New York, viz:		
	16 Jan'y, 1835, J. Reeside's draft on S. L. Gouverneur		2,000 00
	17 do. do. do.		2,000 00
	18 do. do. do.		2,000 00
	1 Feb'y, do. do. do.		334 50
	22 March, 1834 do. do. do.		1,000 00
	21 April, do. do. do.		1,000 00
	9 Sept'r, do. do. do.		2,000 00
	2 Dec., do. do. do.		5,000 00
1835.			
160.—Nov'r 10.	To draft, dated April 18, 1835, due January 10, 1836, accepted by R. C. Mason, sold by me to John McKee and others, discounted August 15, 1835, at United States' Branch Bank at Pittsburgh, for John McKee, protested at maturity, and the amount I now owe the United		

* Error charged J. Page's drafts.

	States' Bank at Philadelphia, having given my note for the same -			$5,000 00
161.—Nov'r 10.	To draft, dated April 18, 1835, payable January 1, 1836, sold to Harbach, protested at maturity, and for which he has a judgment against me - - - - -			5,000 00
162.	To draft, Nov'r 10, 1835, at 60 days' date, accepted by Amos Kendall, protested at maturity, and taken up by check sent C. K. Gardner, the 9th of November, by me -			5,000 00
163.	To error, July 18, 1835, cash -			4,500 00
164.	Do. 23, do. -			4,500 00
165.	Do. 28, do. -			3,000 00
166.—Nov'r 10.	To error, 4 drafs, 2,500 dollars each, of May 25, 1834, for use of department - - - - -			10,000 00
167.	To draft of October 28, accepted by A. Kendall, and renewed at the Metropolis Bank, Washington, D. C.			1,000 00
168.	To draft from Augusta, per C. K. Gardner, letter of the 13th November, 1835 - - -			5,000 00
169.	To draft due 15th July, 1833, and renewed by O. B. Brown's drawing for same on J. Reeside -			3,000 00
170.	To 2 drafts, sent S. L. Gouverneur, one 1,500 and one 3,000 dollars -			4,500 00
171.	To 2 drafts, of 10,000 each, referred to in John Suter's letter of February 3, 1835 - - -			20,000 00
172.—Nov'r 10.	To 2 drafts due January 1st and 10th, 1836, accepted by R. C. Mason, of 5,000 dollars each - -			10,000 00
173	To drafts due 20th July, 1833, $18,000 and $15,000, May 28, 1834, per John Suter's letter, 5th June, 1833 - - - - -			33,000 00
174.	Error in old account, sundry charges paid B. Robinson:			
	1828.			
	January 7, cash - -	$110 00		110 00
	April 1, draft, Jos. W. Davis, P. M. - -	12 18		12 18
	April 1, draft, Jos. McDuffey, P. M. - -	50 00		50 00
	May 29, cash - -	150 00		150 00
	July 1, draft on James Tiffany, P. M. - -	47 39		47 39
	July 24, cash, Robinson -	646 09		646 09

1829.				
174.—Nov'r 10.	January 5, Benjamin Robinson, for his quarter's pay, October 1 to December 31, 1828 - -	$462 33		$462 33
	Benjamin Robinson, for his quarter's pay, Montgomery to Blountsville, 1st July to Sept. 30, 1828 -	462 33		462 33
175.	To error, July 1, 1838, difference in two department accounts, (K. Crocket's draft) - - -			19 00
				335,983 73

Rendered August 10, 1840.

FIFTH ACCOUNT.

POST OFFICE DEPARTMENT, *To James Reeside*, DR.

176.—Error, draft 17th October, 1835, due 90 days after date - - - - - -	$4,500 00
177 —Error, draft 20th October, 1835, due 90 days after	4,500 00
178.—Error, draft 28th October, 1835, due 90 days after	3,000 00
179.—Error, April, 1835, cash Schuylkill Bank -	1,000 00
180.—Error, April, 1835, Farmers' and Mechanics' Bank of Philadelphia - - - -	4,000 00
181.—Error, November 5th, 1835, cash - -	3,000 00
182.—Error, date not known, paid by Bates to S. L. Gouverneur, postmaster, by order of Reeside -	9,500 00
	29,500 00

Rendered 15th August, 1840.

SIXTH ACCOUNT.

POST OFFICE DEPARTMENT, *To James Reeside*, DR.

1832.		
183.—Sept'r 1.	To transporting mail from Brunswick to Easton, from 1st January to 1st September, 1832, 8 months, at $375 per quarter - - - -	$1,000 00
1833.		
184.—Oct'r 1.	To cash for use of the department, placed to its credit in the Western Bank of Philadelphia, proceeds of draft for this sum - - -	10,000 00

185.—Aug. to Oct.	Date not precisely given, owing to the refusal of the department to examine the original entries on the books, documents, and papers of the department, or permit James Reeside to examine them, proceeds of drafts for its use in New York, Boston, or elsewhere, vaguely stated in the letters and other papers of B. Bates and others *as to date*, but with certainty as to the amount - - -	$10,000	00
186.	To cash, error of official account, this sum was for use of the department -	10,000	00
187.	To transporting the mail from the 1st January, 1832, to December 31, 1835, for reasons above not more specific, at $966 per annum - - - - -	3,864	00
188.	To transporting a mail per pay-list, at $2,900 per annum, for reasons above not more specific for same time -	11,600	00
189.	To transporting a mail daily, from Hagerstown to McConnelstown, from 1st October, 1833, to 1st January, 1834	340	00
190.	To transporting mail from Cumberland Valley, &c.. from the 1st January to 31st December, 1832, at $966 50 per quarter - - - - - -	3,866	00
1834.			
191.—Dec. 18.	To transporting mail daily, from Bedford to Blair's Gap, from 1st of March to 31st December, 1833, and one month's pay, at $727 93 per quarter - - - - - - -	2,677	16
192.	To transporting mail from New York to Philadelphia, from 1st of January, 1832, to 31st December, 1835, at "one-half the sum allowed for the express mail from Washington city to Philadelphia, via Lancaster," &c., more specific when the department answers the call for the prices then paid for said mail - - - -	*22,780	50
1835.			
193.—Dec. 31.	To services as agent detecting and about mail-robbers, and expenses between 1st October and 31st December, 1829	1,217	00
194.	To draft "1st October, 1841, on postmaster, Port Carbon," entered on		

* Entered in ink by P. G. Washington since the account was submitted.

	John Suter's book, omitted in official account - - - - - - -	$225 00
195.—Dec.—	To cash, the interest discounted and expense, exchange, &c., paid by J. Reeside on draft at six months, discounted by Western Bank for $20,000, April 30, 1834 - - - -	410 00
	To cash, proceeds of drafts drawn by James Reeside, precise date not specified, (used in New York and elsewhere, sums named but dates not;) the department having omitted and refused to furnish the information of the original entries on books, documents, and papers to Mr. Reeside. Errors, when charged, all used for the benefit of the department.	
196.	To two drafts due in April and May, anticipated - - - - - - -	6,000 00
197.	To three drafts of $2,000 each - -	6,000 00
	To three drafts, $1,000, $2,000 and $1,000 - - - - - - -	4,000 00
	To draft - - - - - - -	2,000 00
	Do. - - - - - - -	1,000 00
	Do. - - - - - - -	1,500 00
	Do. - - - - - - -	500 00
	Do. January 12, 1835 - - -	6,600 00
	Do. January 16, 1835 - - -	2,000 00
	Do. - - - - - - -	300 00
	Do. - - - - - - -	1,500 00
	Do. - - - - - - -	5,000 00
	To three drafts, $2,000 each - -	6,000 00
	To cash, 17th May, 1834, error - -	6,000 00
	To cash, 24th May, 1834 - - -	8,000 00
	Do. - - - - - - -	9,000 00
	To cash, March 15, 1834 - - -	5,000 00
	Do. do - - -	3,000 00
	To cash, "beginning this year, 1834" -	20,000 00
		171,379 66

To errors, services, remittances, cash, &c., short credited James Reeside in the official accounts of the department. To omissions of credits to which James Reeside is justly entitled on the books, papers, and documents of the department and others, to which he is entitled, which, on examination of said books, &c., would have been developed.

Rendered in August, but dated 15th September, 1841.

OFFICE HOUSE OF REPRESENTATIVES, U. S.,
July 24, 1855.

I hereby certify, that the foregoing six accounts are true copies of the printed accounts of James Reeside against the Post Office Department, (without the notes upon the same,) now on file in this office.

Attest: DANIEL BUCK,
Assistant Clerk, Office House Reps., U. S.

Recapitulation of the above aggregates, and sum total of the same.

1st account, aggregate	- - - - -	$457,815	22
2nd Do. do.	- - - - -	551,524	13
3d Do. do.	- - - - -	44,783	26
4th Do. do.	- - - - -	335,983	73
5th Do. do.	- - - - -	29,500	00
6th Do. do.	- - - - -	171,379	66
Total	- - - - - - -	1,590,986	00

This from December 1832, to December 1835.

In the circuit court of the United States, for the eastern district of Pennsylvania, in the third circuit of October session, 1839, No. 13.

THE UNITED STATES OF AMERICA,
vs.
JAMES REESIDE.

UNITED STATES OF AMERICA,
Eastern District of Pennsylvania. } *ss.*

I, George Plitt, clerk of the circuit court aforesaid, do hereby certify, that the annexed subpœnas, sixteen in number, are true, faithful, and correct copies of the originals on file, in the foregoing entitled cause, and now remain of record in my office.

In testimony whereof, I have hereunto subscribed my name and affixed the seal of the said court, at Philadelphia, this sixteenth day of March, A. D. 1855, and in the seventy-ninth year of the independence of the said United States.

GEORGE PLITT,
Clerk C. C.

UNITED STATES,
Eastern District of Pennsylvania. } *sct.*

[SEAL.] *The President of the United States to Orlando Saltmarsh, Saltmarsh:*

We command you, that laying aside all manner of business and

excuses whatsoever, you personally be and appear before the judges of the circuit court of the United States, in and for the eastern district of Pennsylvania, in the third circuit, at a session of the same court, to be holden at the city of Philadelphia, on Monday, the 25th inst., at ten o'clock, a. m., then and there to testify all and singular those matters and things which you shall know in a certain action now depending in the said court, and undetermined, between the United States of America, plaintiffs, and James Reeside, defendant, on the part of said defendant. And hereof fail not, under the penalty of four hundred dollars.

Witness the honorable Roger B. Taney, chief justice of the Supreme Court of the United States, at Philadelphia, this 23d day of October, A. D. 1841, and in the sixty-sixth year of the independence of the said United States.

FRA. HOPKINSON,
Clerk of Circuit Court.

UNITED STATES,
Eastern District of Pennsylvania. } *sct.*

[SEAL.] *The President of the United States, to Edward N. Tailer, Benjamin F. Butler:*

We command you, that laying aside all manner of business and excuses whatsoever, you personally be and appear before the judges of the circuit court of the United States, in and for the eastern district of Pennsylvania, in the third circuit, at a session of the same court, to be holden at the city of Philadelphia, on Thursday, the 21st day of October, A. D. 1841, then and there to testify all and singular those matters and things which you shall know in a certain action now depending in the said court, and undetermined, between the United States of America, plaintiffs, and James Reeside, defendant, on the part of the said plaintiffs. And hereof fail not, under the penalty of four hundred dollars.

Witness the honorable Roger B. Taney, chief justice of the Supreme Court of the United States, at Philadelphia, this 18th day of October, A. D. 1841, and in the sixty-sixth year of the independence of the said United States.

FRA. HOPKINSON,
Clerk of Circuit Court.

NEW YORK, *October* 20, 1841.

We admit service of the within.

B. F. BUTLER,
EDW. N. TAILER.

23*d October*, 1841.—On motion of Mr. Reed, attachment awarded.

UNITED STATES, } *sct.*
Eastern District of Pennsylvania. }

The President of the United States, to Nath'l Green, esq., Boston; Nathaniel Greene, Haverhill, Massachusetts; C. F. Maddox, Baltimore; F. T. Marbury, Baltimore; H. Kennedy, Baltimore:
[SEAL.]

We command you, that laying aside all manner of business and excuses whatsoever, you personally be and appear before the judges of the circuit court of the United States, in and for the eastern district of Pennsylvania, in the third circuit, at a session of the same court, to be holden at the city of Philadelphia, on Tuesday next, the 19th instant, then and there to testify all and singular those matters and things which you shall know in a certain action now depending in the said court, and undetermined, between the United States of America, plantiffs, and James Reeside, defendant, on the part of the said plaintiffs. And hereof fail not, under the penalty of four hundred dollars.

Witness the honorable Henry Baldwin, judge of said court, at Philadelphia, this 13th day of October, A. D. 1841, and in the 66th year of the independence of the said United States.

FRA. HOPKINSON,
Clerk of Circuit Court.

Circuit court, October session, 1841.—U. S. A. *vs.* Reeside.—Subpœna e. p. plaintiffs.

Returnable on the 19th day of October, A. D. 1841.

Served. So answers—

ISAAC OTIS,
Marshal E. D. Pennsylvania.

BOSTON, *October* 16, 1841.

I hereby acknowledge service on me of the within subpœna, and declare my intention to attend the court in conformity thereto.

NATH'L GREENE.

UNITED STATES, } *sct.*
Eastern District of Pennsylvania. }

The President of the United States, to Daniel Shaffer, Mercersburg, Pennsylvania; Matthew Smith, do.; John Siders, W. H. Stille, Hagerstown, Maryland; Daniel Brown, Uniontown, Pennsylvania; John A. Weart, Baltimore, Maryland; John W. Weaver, Cumberland, Maryland; John H. Hofins, Bedford, Pennsylvania; Wm. P. Thompson, James Colhoun, Chambersburg, Pennsylvania; Thomas Schriver, do.; William Lewis, Hancock, Maryland; with all books, letters, memoranda, &c., relating to the transactions of James Reeside with the Post Office Department:
[SEAL.]

We command you, that laying aside all manner of business and

excuses whatsoever, you and each of you personally be and appear before the judges of the circuit court of the United States, in and for the eastern district of Pennsylvania, in the third circuit, at a session of the same court, to be holden at the city of Philadelphia, on Monday next, the 18th instant, then and there to testify all and singular those matters and things which you shall know in a certain action now depending in the said court, and undetermined, between the United States of America, plaintiffs, and James Reeside, on the part of the said plaintiffs. And hereof fail not, under the penalty of four hundred dollars for every of you.

Witness the honorable Henry Baldwin, judge of said court, at Philadelphia, this 13th day of October, A. D. 1841, and in the 66th year of the independence of the said United States.

FRA. HOPKINSON,
Clerk of Circuit Court.

Circuit court, October session, 1841.—U. S. A. *vs.* Reeside.—Subpœna duces tecum.

Returnable on the 19th day of October, A. D. 1841.

Served. So answers—

ISAAC OTIS,
Marshal E. D. Pennsylvania.

I acknowledge the service of the within summons.

J. A. WEART,
WM. H. STILLE,
JOHN SEIDERS,
JOHN. W. WEAVER,
J. H. HOFINS,
DANIEL SHAFFER,
DANIEL BROWN,
WM. LEWIS,
WM. P. THOMPSON,
JAMES COLHOUN.

UNITED STATES,
Eastern District of Pennsylvania. } *sct.*

[SEAL.] *The President of the United States, to Thomas Morgan, Washington, Pennsylvania:*

We command you, that laying aside all manner of business and excuses whatsoever, you personally be and appear before the judges of the circuit court of the United States, in and for the eastern district of Pennsylvania, in the third circuit, at a session of the same court, to be holden at the city of Philadelphia, on Tuesday, the 19th instant, then and there to testify all and singular those matters and things which you shall know in a certain action now depending in the

said court, and undetermined, between the United States of America, plaintiffs, and James Reeside, defendant, on the part of the said plaintiffs. And hereof fail not, under the penalty of four hundred dollars.

Witness the honorable Henry Baldwin, judge of said court, at Philadelphia, this 13th day of October, A. D. 1841, and in the —— year of the independence of the said United States.

FRA. HOPKINSON,
Clerk of Circuit Court.

Circuit court, October session, 1841.—U. S. A. *vs.* Reeside.—Subpœna e. p. plaintiffs.

Returnable on the 19th day of October, A. D. 1841.

Served. So answers—

ISAAC OTIS,
Marshal E. D. Pennsylvania.

OCTOBER 16, 1841.

I acknowledge the service of the within subpœna, this day, upon me. THOMAS MORGAN.

UNITED STATES, } *sct.*
Eastern District of Pennsylvania, }

[SEAL.] *The President of the United States, to John Taylor and Charles W. Earnest, Pittsburg:*

We command you, that laying aside all manner of business and excuses whatsoever, you, and each of you, personally be and appear before the judges of the circuit court of the United States, in and for the eastern district of Pennsylvania, in the third circuit, at a session of the same court to be holden at the city of Philadelphia, on Tuesday next, the 19th instant, then and there to testify all and singular those matters and things which you shall know in a certain action now depending in the said court, and undetermined, between the United States of America, plaintiffs, and James Reeside, defendant, on the part of said plaintiffs. And hereof fail not, under the penalty of four hundred dollars.

Witness the honorable Henry Baldwin, judge of said court, at Philadelphia, this thirteenth day of October, A. D. 1841, and in the 66th year of the independence of the said United States.

FRA. HOPKINSON,
Clerk of Circuit Court.

Circuit court, October session, 1841—U. S. A. *vs.* Reeside.—Subpœna; e. p. plaintiffs.

Returnable on the nineteenth day of October, A. D. 1841.

Served. So answers—

ISAAC OTIS,
Marshal E. D. Pennsylvania.

I do hereby acknowledge the service of the within, this 16th day of October, 1841.

JOHN TAYLOR.
C. W. EARNEST.

Service acknowledged.

UNITED STATES. } *sct.*
Eastern District of Pennsylvania. }

The President of the United States, to John R. Nourse, to bring books of the Patriotic Bank, showing the discount or collection of three drafts of James Reeside, or S. L. Gouverneur, dated January 8, 1835, *for* $2,000 *each, and for whose use or benefit.*

[SEAL.]

We command you, that laying aside all manner of business and excuses whatsoever, you personally be and appear before the judges of the circuit court of the United States, in and for the eastern district of Pennsylvania, in the third circuit, at a session of the same court, now holding at the city of Philadelphia, forthwith, then and there to testify all and singular those matters and things which you shall know in a certain action now depending in the said court and undetermined, between the United States of America, plaintiffs, and James Reeside, defendant, on the part of the said plaintiffs. And hereof fail not, under the penalty of four hundred dollars.

Witness the honorable Roger B. Taney, chief justice of the Supreme Court of the United States, at Philadelphia, this twenty-sixth day of October, A. D. 1841, and in the 66th year of the independence of the said United States.

FRA. HOPKINSON,
Clerk Circuit Court.

Circuit court, October session, 1841—U. S. A. *vs.* Reeside.—Subpœna duces tecum, e. p. plaintiff.

Returnable forthwith.

Served. So answers—

ISAAC OTIS,
Marshal E. D. Pennsylvania.

UNITED STATES,
Eastern District of Pennsylvania. } *sct.*

The President of the United States, to James Campbell, Nathan Newton, Henry Elias, James Hunt, William D. Lewis, J. B. M'Ilvaine, George Helmbold, A. Menges, Peter Baker, James Brobson, J. P. Weatherill, (with books of bank,) Jesse Tomlinson, Isaac Herbert:

[SEAL.]

We command you, that laying aside all manner of business and excuses whatsoever, you, and each of you, personally be and appear before the judges of the circuit court of the United States, in and for the eastern district of Pennsylvania, in the third circuit, at a session of the same court, to be holden at the city of Philadelphia, on the eleventh day of November, A. D., 1841, at ten o'clock, a. m., then and there to testify all and singular those matters and things which you shall know in a certain action now depending in the said court, and undetermined, between the United States of America, plaintiffs, and James Reeside, defendant, on the part of the said plaintiffs. And hereof fail not, under the penalty of four hundred dollars for every of you.

Witness the honorable Roger B. Taney, chief justice of the Supreme Court of the United States, at Philadelphia, this fifth day of November, A. D., 1841, and in the 66th year of the independence of the said United States.

FRA. HOPKINSON,
Clerk of Circuit Court.

Circuit Court.—October session, 1841.—U. S. A. *vs.* Reeside.—Subpœna, e. p. plaintiff.

Returnable on the 11th day of October, [Nov.] A. D. 1841.

Served. So answers—

ISAAC OTIS,
Marshal E. D. Pa.

UNITED STATES,
Eastern District of Pennsylvania. } *sct.*

The President of the United States, to Michael Snyder, (Manayunk,) Joseph S. Riley, Colonel James Page, J. B. Taylor, William Harbeson, Charles Thomas, Silas Moor, John B. Trevor, L. Knowles:

[SEAL.]

We command you, that, laying aside all manner of business and excuses whatsoever, you personally be and appear before the judges of the circuit court of the United States, in and for the eastern district of Pennsylvania, in the third circuit, at a session of the same court, to be holden at the city of Philadelphia forthwith, then and there to testify all and singular those matters and things which you shall know, in a certain action now depending in the said court, and undetermined,

between the United States of America, plaintiffs, and James Reeside, defendant, on the part of the said plaintiff. And hereof fail not, under the penalty of four hundred dollars.

Witness the honorable Roger B. Taney, chief justice of the Supreme Court of the United States, at Philadelphia, this 29th day of October, A. D. 1841, and in the 66th year of the independence of the said United States.

FRA. HOPKINSON,
Clerk of Circuit Court.

Circuit Court.—October session, 1841.—U. S. A. *vs.* Reeside.—Subpœna e. p. plaintiffs.

Returnable forthwith.

M. Snyder, omitted.

Served. So answers—

ISAAC OTIS,
Marshal E. D. Pennsylvania.

UNITED STATES, } *sct.*
Eastern District of Pennsylvania. }

The President of the United States, to William Patton, Joseph Brobston, William J. Baker, with discount book F. and M. B'k., [SEAL.] 1835.

We command you, that laying aside all manner of business and excuses whatsoever, you and each of you personally be and appear before the judges of the circuit court of the United States, in and for the eastern district of Pennsylvania, in the third circuit, at a session of the same court, to be holden at the city of Philadelphia, on Tuesday, the 26th day of October, A. D. 1841, at ten o'clock, a. m., then and there to testify all and singular those matters and things which you shall know in a certain action now depending in the said court, and undetermined, between the United States of America, plaintiffs, and James Reeside, defendant, on the part of the said plaintiffs. And hereof fail not, under the penalty of four hundred dollars.

Witness the honorable Roger B. Taney, chief justice of the Supreme Court of the United States, at Philadelphia, this 25th day of October, A. D. 1841, and in the 66th year of the independence of the said United States.

FRA. HOPKINSON,
Clerk of Circuit Court.

Circuit court, October session, 1841.—U. S. A. *vs.* Reeside.—Subpœna e. p. plaintiffs.

Patton Baker, omitted.

Served. So answers—

ISAAC OTIS,
Marshal E. D. Pennsylvania.

UNITED STATES, } sct.
Eastern District of Pennsylvania, }

The President of the United States, to S. Warne, Edward N. Tailer, Samuel L. Gouverneur, Gouverneur S. Bibby, Benjamin F. [SEAL.] *Butler, R. N. Wenman, John W. Thorn, John Taylor, Browen King.*

We command you, that laying aside all manner of business and excuses whatsoever, you and each of you personally be and appear before the judges of the circuit court of the United States, in and for the eastern district of Pennsylvania, in the third circuit, at a session of the same court, now holding at the city of Philadelphia, forthwith, then and there to testify all and singular those matters and things which you shall know in a certain action now depending in the said court, and undetermined, between the United States of America, plaintiffs, and James Reeside, defendant, on the part of the said plaintiffs. And hereof fail not, under the penalty of four hundred dollars.

Witness the honorable Roger B. Taney, chief justice of the Supreme Court of the United States, at Philadelphia, this 20th day of October, A. D. 1841, and in the 66th year of the independence of the said United States.

FRA. HOPKINSON,
Clerk of Circuit Court.

Circuit court, October session, 1841.—U. S. A. *vs.* Reeside.—Subpœna e. p. ptaintiffs.

Returnable forthwith.

Served. So answers—

ISAAC OTIS,
Marshal E. D. Pennsylvania.

UNITED STATES, } sct.
Eastern District of Pennsylvania, }

The President of the United States, to Joseph Dod, John Traverse, [SEAL. *Abraham Reynolds, to bring with him clerks and books, &c., of Patterson Bank, relating to discount of Reeside's drafts:*

We command you, that laying aside all manner of business and excuses whatsoever, you and each of you, personally be and appear before the judges of the circuit court of the United States, in and for the eastern district of Pennsylvania, in the third circuit, at a session of the same court, to be holden at the city of Philadelphia, on Thursday, the 21st day of October, A. D. 1841, then and there to testify all and singular those matters and things which you shall know in a certain

action now depending in the said court, and undetermined, between the United States of America, plaintiffs, and James Reeside, defendant, on the part of said plaintiffs. And hereof fail not, under the penalty of four hundred dollars.

Witness the honorable Roger B. Taney, chief justice of the Supreme Court of the United States, at Philadelphia, this 18th day of October, A. D. 1841, and in the 66th year of the independence of the said United States.

FRA. HOPKINSON,
Clerk of Circuit Court.

Circuit court, October session, 1841.—U. S. A. *vs.* Reeside.—Subpœna e. h. plaintiffs.

Returnable on the 21st day of October, A. D. 1841.

Travers omitted.

Served. So answers—

ISAAC OTIS,
Marshal E. D. Pennsylvania.

UNITED STATES,
Eastern District of Pennsylvania, } *sct.*

The President of the United States, to the Postmaster General of the United States and Elisha Whittlesey, Auditor, [*and that you bring with you day book, northeast O. Journal P., No.* 1, *and middle ledger from the* 31*st day of December*, 1832, *to* 31*st December* 1833, *southern Journal P., No.* 3, 1834, *for the whole year; pay book or list, cash books, letter books, and all other books in which the services or pecuniary transactions of James Reeside, or contracts, or anything in relation thereto, are entered, from* 1*st day of Jannary*, 1825, *to* 31*st December*, 1839, *and for the same, all papers or documents, bank books and bank accounts, and accounts of agents connected with the pecuniary transactions of James Reeside, or his drafts on the defendant, or its agents on him.*]

[SEAL.]

We command you, that laying aside all manner of business and excuses whatsoever, you and each of you forthwith personally be and appear before the judges of the circuit court of the United States, in and for the eastern district of Pennsylvania, in the third circuit, at a session of the same court, now holding at the city of Philadelphia, then and there to testify all and singular those matters and things which you shall know in a certain action now depending in the said court, and undetermined, between the United States of America, plaintiff, and Reeside, defendant, on the part of the said plaintiff. And hereof fail not, under the penalty of four hundred dollars.

Witness the honorable Roger B. Taney, chief justice of the Supreme Court of the United States, at Philadelphia, this eleventh day of

October, A. D. 1841, and in the sixty-sixth year of the independence of the said United States.

FRA. HOPKINSON,
Clerk of Circuit Court.

Circuit court, October session, 1841.—U. S. A. *vs.* Reeside.—Subpœna duces tecum, e. p. defendant.

Returnable forthwith.

Service accepted by the Auditor of the Post Office Department, Washington.

I have caused to be selected all the books and papers which appear to me to be embraced in the within subpœna, and placed them in the charge of a clerk of this office, to be used on the trial of the case referred to, understanding from the counsel of the defendant that the said books and papers are all that is herein required.

ELISHA WHITTLESEY,
Auditor.

October 15, 1841.

United States, } *sct.*
Eastern District of Pennsylvania. }

The President of the United States to William J. Watson: also to Asbury Dickins, Esq., Secretary of the Senate of the United States, who is to bring with him the two reports of the Committee [seal.] *on the Post Offices and Post Roads on the condition of the Post Office Department, made to the Senate on the 9th June,* 1834, *and 27th January,* 1835, *with all the documents and papers accompanying the said reports:*

We command you, that laying aside all manner of business and excuses whatsoever, you personally be and appear before the judges of the circuit court of the United States, in and for the eastern district of Pennsylvania, in the third circuit, at a session of the said court, to be holden at the city of Philadelphia, forthwith, then and there to testify all and singular those matters and things which you shall know in a certain action now depending in the said court, and undetermined, between the United States of America, plaintiffs, and James Reeside, defendant, on the part of the said plaintiffs. And hereof fail not, under the penalty of four hundred dollars.

Witness the honorable Roger B. Taney, chief justice of the Supreme Court of the United States, at Philadelphia, this 27th day of October, A. D. 1841, and in the sixty-sixth year of the independence of the said United States.

FRA. HOPKINSON,
Clerk of Circuit Court

Circuit court, October session, 1841.—U. S. A. *vs.* Reeside.—Subpœna duces tecum.

Returnable forthwith.

Served by the marshal of the District of Columbia,.

NOVEMBER 1st, 1841.

Summoned Asbury Dickins.—Non est William J. Watson.

ALEX. HUNTER,
Marshal District of Columbia.

Marshal fees, $0 50.

UNITED STATES, } *sct.*
Eastern District of Pennsylvania. }

The President of the United States, to Selah R. Hobbie, Assistant Postmaster General, Peter G. Washington, John Suter, William C. Lipscomb, J. W. Hand, C. K. Gardner, Amos Kendall,
[SEAL.] *Nicholas Tastet, Richard D. Smith, James Adams, ——— Bester, John Calvert, William B. Lewis, George Thomas, John P. Wheeler, Samuel Burche, Z. J. Perry:*

We command you, that laying aside all manner of business and excuses whatsoever, you personally be and appear before the judges of the circuit court of the United States, in and for the eastern district of Pennsylvania, in the third circuit, at a session of the same court, to be holden at the city of Philadelphia, on the eighteenth day of October, A. D. 1841, at ten o'clock, A. M., then and there to testify all and singular those matters and things which you shall know in a certain action now depending in the said court, and undetermined, between the United States of America, plaintiffs, and James Reeside, defendant, on the part of the said plaintiffs, and bring with you all books, papers, letters and documents relating in any manner to transactions of the defendant as contractor for the transportation of the mail, and drafts and orders on or by the Post Office Department, to which the said defendant was in any manner a party. And hereof fail not, under the penalty of four hundred dollars each.

Witness the honorable Roger B. Taney, chief justice of the Supreme Court of the United States, at Philadelphia, this 13th day of October, A. D. 1841, and in the sixty-sixth year of the independence of the said United States.

FRA. HOPKINSON,
Clerk of Circuit Court.

Circuit court, October session, 1841.—U. S. A. *vs.* Reeside.—Subpœna duces tecum.

Returnable on the 18th day of October, A. D. 1841.

Served. So answers—

ISAAC OTIS,
Marshal E. D. Pennsylvania.

Service acknowledged, Oct. 15, 1841.

S. R. HOBBIE,
N. TASTET,
JNO. SUTER,
C. K. GARDNER,
JAS. ADAMS,
J. W. HAND.

Service acknowledged,

P. G. WASHINGTON.

UNITED STATES, } sct.
Eastern District of Pennsylvania. }

[SEAL.] *The President of the United States, to Samuel L. Gouverneur, Gouverneur S. Bibby:*

We command you, that laying aside all manner of business and excuses whatsoever, you personally be and appear before the judges of the circuit court of the United States, in and for the eastern district of Pennsylvania, in the third circuit, at a session of the same court, to be holden at the city of Philadelphia, on Thursday, the 21st day of October, A. D. 1841, then and there to testify all and singular those matters and things which you shall know in a certain action now depending in the said court, and undetermined, between the United States of America, plaintiffs, and James Reeside, defendant, on the part of the said plaintiffs. And hereof fail not, under the penalty of four hundred dollars.

Witness the honorable Roger B. Taney, chief justice, of the Supreme Court of the United States, at Philadelphia, this 18th day of October, A. D. 1841, and in the sixty-sixth year of the independence of the said United States.

FRA. HOPKINSON,
Clerk of Circuit Court.

SOUTHERN DISTRICT OF NEW YORK, *October* 20, 1841.

The within writ was duly served this day, on the within-mentioned Samuel L. Gouverneur, by showing the same to him, and at the same time personally handing to him a true copy thereof.

SILAS M. STILWELL,
United States Marshal.

October 23, 1841.—On motion of Mr. Reed, attachment awarded.

Argument for Mary Reeside, executrix, &c., vs. *the United States, by Joseph B. Stewart, Esq., of Louisville, Kentucky.*

"That every freeman ought to find a certain remedy, by recourse to the laws, for all injuries and wrongs he may receive in his person, property, or character; he ought to obtain right and justice freely, without sale—completely, and without denial—promptly, and without delay; and that all establishments or regulations contravening these rights are oppressive and unjust."—*North Carolina Declaration of Rights*, 1788.

IN THE UNITED STATES COURT OF CLAIMS.

MARY REESIDE, Executrix, &c.,
vs.
THE UNITED STATES.

Argument for Mary Reeside.

Many questions of grave interest will doubtless be submitted for the consideration of this court, but none that involves a subject of more tender concern to the hearts of the American people than that which is embraced in the present. Its importance is not narrowed down to the mere limits of the special interests immediately involved, but claims a *wider* and *deeper* range. It strikes to the very roots of our republican institutions, and comes down to us with the growth of our political system. It is an issue of *right* and *power* between the American people and the government of their creation, and its decision is to announce *who is sovereign*, and *whence such sovereignty;* whether the government was created to *protect the citizens* in their rights, or *bind them* as its vassals; whether the right of trial by jury in civil causes is *secured* or *denied* to the people where the government is a party, or whether this government has the right to frown down and insult that mode of trial most dear to a free people, by telling them that its *sovereign* dignity soars too high above their heads to be reached by the verdicts of their juries.

The question, then, before us is not a mere legal issue to be decided as *demurer*, but a great question of *legislative power* on the one part, and the right of trial by jury on the other. It is, emphatically, the *Government* vs. *The People*, and no special pleading can change the issue: a question the interest in which must continue to increase from the moment it hails the public mind. The people of this country will with earnestness ask, what has become of our chartered rights? Are we less free now than when our fathers declared us so? Have our constitutional guarantees faded away under legislative grasp? Have we not the right of trial by jury in civil causes where the government is a party? Can the government drag us into its courts—before its juries—and then annul and disregard the verdicts of its juries if rendered in favor of the citizen? Have we an independent judiciary at all, or one *fettered* by the uncertain discretion of congressional dictation? These are important questions, and are each called forth in the present issue; upon which, after reciting the facts as they appear, we will proceed to express the conclusions to which we have come after a thorough examination of the best lights we have been able to

reach, remarking, as we proceed, that had Congress specially sought, it could not have touched upon an assumption of power calculated to elicit a more stubborn resistance from this people than to offer to infringe the right of *trial by jury*.

Facts of the case.

The case of Mary Reside, as set forth in her original and amended petitions, with the documentary evidence accompanying the same, is in substance as follows:

1st. About the year 1816, James Reeside became a mail contractor under the Post Office Department of the United States government, and continued as such till the year 1836—a period of twenty years—embracing five presidential administrations.

2d. The great increase of population, and consequent increase of agriculture and commerce during each successive four years which his renewed contracts had to run, demanded a corresponding increase of mail service, called *extra service*, beyond what was stipulated for.

3d. This increased service was particularly great about the years 1828 and 1832, when those heated presidential contests were being conducted, and was demanded by the commercial and political exigencies of those times.—(See the reports of the committee of investigation in 1834–'5.)

4th. The great increase of mail transportation, and consequent increase of expense, greatly embarrassed and involved the Post Office Department, which, to relieve itself, had to resort to the agency of some of its contractors to endorse and negotiate its acceptances—among whom James Reeside was a principal man—the department using his individual name for negotiations to the amount of many hundreds of thousands of dollars.

5th. It frequently happened that the department was in no better condition to take up those acceptances when due than when first issued, which cast the burden upon Reeside to do so, who was compelled to honor them to save his credit.

6th. As a consequence of this state of affairs, the transactions of Reeside with the Post Office Department became very large, and greatly complicated.

7th. At the end of the year 1835, Reeside withdrew from his contracts with the government—the same having expired—and demanded a settlement of his accounts, claiming some $275,000 to be due him.

8th. The Hon. Wm. T. Barry, the Postmaster General, under whose administration most of these extra services had been performed, and perhaps all the moneyed negotiations made by Reeside, had left the department and gone on a mission abroad, as United States minister.

9th. Mr. Amos Kendall, who succeeded Mr. Barry in the Post Office Department, refused to recognize the transactions of his predecessor, but ordered Reeside to be charged with the allowances before made by Mr. Barry, and all acceptances negotiated which did not appear to be accounted for on the books of the department, which had been so

badly kept as to fall far short of affording a correct exposition of the matter.

10th. The department took three years to investigate and make out Reeside's accounts, and finally presented them, bringing him in debt to the department $32,709 62; Reeside claiming, as before stated, some $275,000 in his favor.

11th. In 1839 the United States brought suit in the United States circuit court for the eastern district of Pennsylvania, against Reeside, to recover this alleged balance of $32,709 62.—(See the record filed.)

12th. This suit was continued by the government for three years longer, till 1841; in the mean time further exerting itself to prepare to sustain its demand against Reeside.

13th. In 1841 the case came to trial before a select judge, Reeside pleading non-assumpsit and set-off of his demand.—(See the record.)

14th. The investigation in court lasted some five weeks, the government bringing forward some eighty-three witnesses to sustain its demand.—(See the notes of trial taken down by the judges.)

15th. After the case was fully argued by counsel on both sides, the presiding judge delivered an elaborate charge to the jury, fully instructing them as to all the matters in proof, and the course they should pursue in finding their verdict.—(See the charge.)

16th. The jury, after a protracted labor and minute examination, returned a verdict against the government, and certified a balance in favor of Reeside of $188,496 06, (having rendered a first verdict for a much larger sum; but, upon the urgent solicitation of *one* juror, went into a thorough review, and struck the sum of $25,000 off, leaving the verdict as above stated.)

17th. Upon the return of this verdict, the government, by its attorneys, moved for a new trial, and stated as cause twelve specific grounds.—(See the record.)

18th. After a thorough argument by counsel, both on the part of the United States and Reeside, the court, after mature deliberation of all the grounds alleged, delivered an elaborate opinion overruling the motion for a new trial.—(See the opinion.)

19th. It will be seen that the verdict was rendered 6th December, 1841. On the 3d day following, to wit, the 9th December, 1841, reasons for new trial were filed. On the 12th of May, 1842, the court overruled the motion, and pronounced judgment on the verdict. The United States then declared their purpose to prosecute a writ of error, but took no steps towards doing so.

20th. No writ of error being prosecuted in any shape up to the 18th of July, 1842, or bill of exceptions prepared or presented to the court, Reeside, being greatly in want of his means, memoralized Congress on that day for an appropriation to pay the verdict rendered by the jury in his favor.

21st. Nine days after this memorial, to wit, on the 27th of July, 1842, the government, for the first time, filed its precept for its threatened writ of error in the United States circuit court in Philadelphia.

22d. On the 1st of August, 1842, Mr. Whittlesey, Auditor of the Post Office Department, addressed a letter to the committee in Congress, acknowledging the receipt of theirs of the 20th July, stating

that a writ of error was filed, but no bill of exceptions or ground of error was assigned. This communication, however, stopped the further action of the committee.—(See the letter in the amended petition.)

23d. In September, 1842, James Reeside died, appointing his wife, Mary Reeside, executrix and sole devisee; who, as such, on the 22d day of December, 1842, further moved before Congress for an appropriation to pay the verdict in favor of her testator; but another letter from the auditor, Mr. Whittlesey, again checked the action of that body.

24th. Up to January, 1843, no bill of exceptions or other matter of error being assigned or prosecuted by the United States, nor any likelihood that there would be, Mary Reeside, by her counsel, obtained the proper papers, setting forth the precept filed in the circuit court, and, docketing the cause according to rule in the Supreme Court, had it dismissed; and no further steps were ever taken by the government to present any grounds of error, or wrong in the verdict, in any shape.—(See the record.)

25th. From 1842 till 1848 Mary Reeside continued to memorialize every session of each Congress for relief without any definite result; at the last named period she was advised to, and did, try a writ of mandamus, which failed.

26th. After the failure of her mandamus, she again pursued her hopeless memorials to Congress, but never could get her prayers acted upon satisfactorily in any shape.—(See the record of the proceedings in the amended petition.)

27th. She petitions this court for a decree authorizing the payment, with interest, of the verdict rendered by the jury in favor of her testator in the year 1841. Is she entitled to the benefit of this verdict? Is the question to be answered by this court; and, if not, *why?*

In behalf of Mary Reeside, we respectfully *but earnestly* insist upon the following principles of the Constitution, of right, law, and equity, as supporting her cause:

I.

The right of trial by juries in all civil causes where facts alone are to be ascertained, is the inherent birthright of a free people, and was claimed by the American colonies as based upon Magna Charta prior to their Declaration of Independence, and the attempted infringement of this right was one of the main causes which led to their revolt against the British crown.

II.

The Declaration of our Independence reasserted this right; and the formation of the present Constitution further guarantied and pledged it to the American people.

III.

The framers of the Federal Constitution never intended, and would not have dared, to deprive the American people of trial by jury in civil causes, where facts were to be ascertained or their property affected.

IV.

The Constitution of these United States is a system of government designed to protect the citizen, and not to oppress and enslave him, or abrige his rights; and all attempts from any source—either executive, legislative, or judicial—to give it such effect, is a *violalion* of that compact, and *treason against the people.*

V.

There is no word or clause in the Consitution that exempts the government from a *direct* accountability to the citizen for all just demands; and any attempt so to construe it is to interpolate *a construction* at variance with the letter of that instrument, and subversive of the great ends for which it was established.

VI.

An independent judiciary is the great safeguard of a free people; and trial by jury in civil causes is an essential part of such judiciary—that both are established by the Constitution, and hence are a co-ordinate branch of the government, free from *legislative dictation;* and to attempt such on the part of Congress is to assume judicial powers not delegated by the Constitution to them.

VII.

There is nothing in the Constitution of these United States which, in the slightest degree, forbids the citizen to sue the government for a just demand—that such denial is only *implied* under the judiciary act of 1789, *which is of doubtful constitutionality*—and of none the greater force because it has received the erroneous sanction of many years' acquiescence.

VIII.

The judiciary act of 1789, *if constitutional*, can only have the effect of prohibiting the citizen from instituting an original suit against the government, which it does not do in *terms*, but at most only by *implication,* but cannot extend *such implication* so far as to deprive the citizen of the fullest benefit of a *verdict* or *decree* rendered in his favor, where the government chooses to make him a defendant in a civil cause.

IX.

There is nothing in the letter or spirit of the Constitution of the United States, which vests the government, as such, with *royal prerogatives* or *sovereign immunities;* and all attempts to clothe it with such is to borrow the examples of despotic governments, and engraft them upon this; thereby elevating it above the reach of the people, or the control of their laws, which, if permitted, must change the republican features of our government into a *monarchy* as *absolute* as though the same powers were vested in a living king—all of which is *obnoxious to the genius of the American people.*

X.

When the *government* and *citizen* meet before the judicial tribunals of the land, as *plaintiff* and *defendant*, they stand upon equal grounds, entitled to the same rights, and subject to the same rules; and whatever precludes the *citizen* must preclude the government—which equality constitutes the charm of our republican institutions; and all attempts to destroy it by assuming privileges not delegated to the government are an infringement upon the rights of the American citizen, and must lessen his respect for, and weaken his allegiance to, his government.

XI.

The clause in the Constitution which reads, "*No money shall be drawn from the treasury but in consequence of an appropriation made by law,*" may be properly construed to embrace all matters that are of an original or purely legislative character, and as such may be inquired into to any extent by Congress; but such inquiry cannot extend to appropriations asked to pay the *verdicts* of juries, or decrees of the courts, after the same have been fully investigated and rendered, or pronounced, by the *judicial tribunals*—whose proceedings must be presumed to be right, and not subject to *reversal* or *review* by Congress, which would be destructive of the independence of the judiciary, and annul the utility of their proceedings. But all verdicts or decrees pronounced against the government, *after due course of law*, are *debts* which imperatively demand an appropriation, which Congress have no right to refuse or question.

XII.

The VIIth article of the amendment to the Constitution, which forbids that any *fact* tried by a jury shall be re-examined in any court of the United States, except according to the rules of the common law, is imperative, and admits of no exceptions as to *persons* or *parties* where legal rights are to be ascertained; but must bind as well the government as *plaintiff*, as the citizen it may make *defendant;* and to establish

any other rule would vest the government (plaintiff) with power to harass the citizen (defendant) with an onerous defence in its courts, and if not pleased with the result, then to *re-examine the same facts* in its legislative departments, and thus mete out *such justice* as its caprice or *political complexion* might dictate—a privilege utterly destructive of the rights of the citizen, and which can only be granted when we are ready to surrender the right of trial by jury absolutely.

XIII.

There is nothing in the Constitution, or any positive law, that exempts the government, technically or morally, from the payment of interest on a *just debt*, for money advanced or service performed for its benefit, *when the amount is liquidated and ascertained to be due.* Such is the established law of the land, between debtor and creditor, and there is no moral or legal exemption in favor of the government, more than any other debtor. The government itself exacts interest of to say that *it shall not pay interest*, is not only to disregard the rule all its debtors, whether upon open account, bond, or judgment; and which it rigidly enforces upon the citizen, but also to permit the government to make a forced loan of the citizen's substance without compensation, which is an oppression without cause, and sustained alone by arbitrary power.

XIV

"*To establish justice*" is the sole and essential object of the Constitution of these United States. The jurisprudence of this country defines what *is justice*, and that which is justice between the people is none the *less* justice because the government is a party. While it is confined to this rule, it is plain and easy to be understood, but when departed from, we are involved in *subtle exceptions fallaciously assumed*, and perplexing to our understanding, which is destructive to that *consistency* and *harmony* of *principal* which imparts the greatest vigor and strength to our republican institutions.

To maintain collectively the foregoing positions and principles, we invite attention to the following reasons and comments thereon—as traced down from the origin of our government.

Trial by Jury—What, and whence derived.

This court need not be reminded that the right of trial by jury has, from the days of "*Magna Charta*," been deemed the inalienable birthright of Englishmen; that it was planted in the hearts of the English people, where it dwelt, in part suppressed by tyrannical sway, for generations, till outraged justice could no longer bear the tyrant's tread, when it burst forth in one spontaneous demand like a thunderbolt from the heavens, whose mighty shock convulsed the English

throne, till the awe-stricken despot responded back an unqualified cession, and stamped his surrender with his seal, for himself and his successors, to that great instrument which has since been the bulwark of English liberty, and which was christened with a name commensurate with its merits—was properly styled their great charter. It was not procured by the clamorous voice of discontented faction, but was a mandate from the chancery of nature's rights, as inspired by the principles of eternal justice, commanding a tyrant to yield implicit obedience to its fiat. It was triumphant—and the shackles fell from the hands of fettered right, and Magna Charta becomes the theme of *Freemen's* song.

When arbitrary policies invaded the conscience by restrictive laws, and sought to fetter the heart by prescribing what covenants should exist between the soul and man, and his Supreme Creator; caused our persecuted forefathers to sever the ties of kindred and home—to forego the pleasures and comforts of life to which they were born, and to voluntarily exile themselves to this hemisphere, then a wilderness occupied by the beast and savage, and unknown to civil rule—they brought with them in their pilgrimage over the turbid deep two great and imperishable luminaries—the *Revelation* of the God they worshipped, and the "*Magna Charta*" of their *civil rights;* the latter to protect them in a state of society in life and liberty, the former to secure their peace with their God when their earthly pilgrimage was done. What sublimity in the idea! What a triumph in their resolve! Comment cannot enlarge the merits, nor eulogy add an accumulated laurel to the achievements so great of *those noble pioneers* of *human rights.* Hence it was from the founding of the first to the last of the thirteen colonies, after planting the "*Bible*" as the basis of their Christian faith, "*Magna Charta*" was proclaimed as the palladium of their civil rights, and, above all, the right of "*trial by jury*" was consecrated with almost idolatrous devotion. And never, from then till within these latter days, have we been taught to disregard its merits, or persuaded to relinquish aught of its salutary protection.

Verily we may say that "*progress*"—a term that may afford a sanction for any usurpation—has taken a rapid stride when it has dared to overleap the most sacred protection of human rights, and offered to substitute the arbitrary discretion of the political forum over the solemn and impartial inquest of trial by our peers.

IT WAS PRESERVED IN THE CHARTER OF EACH OF THE THIRTEEN COLONIES.

To show that we do not overdraw upon the precepts of our fathers, let us examine the *records of the past,* and see what instructions are to be derived from them. By looking over the charters of the thirteen colonies, as first granted, and subsequently altered to suit their convenience, we find they were ever careful to preserve the right of trial by jury. We have them now before us in the 1st volume of Elliot's Debates, extending from the 22nd to the 42nd page, which contains a condensed statement of the condition of the colonies, from their earliest organization before the revolution, down to that eventful period. As we approach those precepts, *the first sparks of our freedom,* the heart of the true American is cheered with those *unequivoca*

guarantees of his *rights* and *liberties*, and his bosom heaves with throbs of silent *homage* to the memory of those whose self-denying patriotism established and bequeathed to us those blessings.

Virginia.

In this ancient colony, after organizing under their charter, they attached a bill of rights, and especially provided for trial by jury. Hence we see it declared that "the prevalence of the common law was also provided for in all their charters." "The trial by jury, although a privilege resulting from their *general rights*, *was guarded by special* legislation," &c.—(See 1st vol. Elliot's Debates, page 24.)

Plymouth Colonies.

"They adopted the common law of England as the general basis of their jurisprudence," with a view to the establishment of the "free liberties of the freeborn people of England." "It was, therefore, declared, almost in the language of Magna Charta, that *justice* should be administered unto *all*, not *sold* or *denied*." "That no person should suffer in respect of life, limb, liberty, good name, or estate," &c.; "that in criminal and *civil cases* there should be a *trial by jury*—at all events *upon final trial* on *appeal*," with "right to challenge," &c.—(See 1st Elliot's Debates, page 25.)

Massachusetts.

This colony seems to have labored under some arbitrary restrictions from the crown, against which they greatly complained and remonstrated, till the grant of a new charter, in the year 1691, when the legislation of the colony took a wider scope. "At the very first session, an act passed declaring the general rights of the people, embracing the provisions of Magna Charta." "Among other things, it was declared," &c., "that trial by jury should be secured to all the inhabitants," &c.—(Ibid, page 27.)

New Hampshire.

This colony other adopted her laws, in substance, the same as Massachusetts, from which they were, in a great measure, copied. She was equally careful in protecting the rights of her people, both as to life and property; and, as a best safeguard to these, trial by jury in all matters where either was to be affected, withheld, or destroyed, was declared to be the right of every citizen.

Each of the other colonies observed, and maintained in their bills of rights and fundamental laws, the right of trial by jury in all matters whatsoever where an issue of fact was to be ascertained, unless the citizen chose, voluntarily, to select some other mode. But no judicial tribunal, or legislative body, every offered to abridge or disregard the verdicts of juries, after having exhausted the common-law rules for examining the same.

INFRINGEMENT OF TRIAL BY JURY A PRINCIPAL CAUSE OF THE REVOLUTION.

When the British Parliament assumed the right to legislate for the American colonies in *all matters whatsoever*, it undertook, as a consequence of such assumption, to impose certain arbitrary burdens upon our trade and commerce, in the shape of stamp acts, and other exactions, which created great alarm for our rights as a people. And then, when it attempted to enforce those obnoxious laws by tribunals created for the special purpose, and in order to secure such decrees or verdicts as suited its wishes, it deprived us, among other things, of the right of trial by jury *in civil causes*, (not *criminal causes* merely.) The shock thus produced upon the mind of the American people at once ripened to maturity the feeling for resistance, already deep planted in their hearts by oppresive laws and formed the last crowning cause of the *Declaration of our Independence*.

Hence the Congress of delegates from the several colonies, which convened at Carpenter's Hall, in the city of Philadelphia, on the 5th September, 1774, did, on the 6th of October following, resolve among other things, "that the respective colonies are entitled to the common law of England, *and more especially to the great and inestimable* privilege *of being tried by their peers of the vicinage*, according to the course of the common law," &c.

This *right of trial by jury*, when interpreted by the common law, and by the letter and spirit of their various charters which we have before cited, extended to all matters where *facts* were to be ascertained affecting either *life*, *liberty*, or *property*. Therefore, when arraigning the British crown in their manifesto to present before the civilized world as the causes of their revolt and separation from its control, they specifically declared: "*For depriving us, in many cases, of the benefits of trial by jury*," &c. It was the invasion of this right, more than any other, that aroused our ancestors to resistance. It was dear to the hearts of the people. It was the palladium of their civil rights. Though few in numbers, and weak in resources, *this*, most of all other usurpations, nerved the arms, and inspired the souls of our Saxon ancestors to a climax of action that struck terror to the centre of the British throne, and snatched from the iron grasp of the tyrant *the rights* he dared pervert. The struggle was, indeed, sanguinary, and many a brave heart perished in the conflict, but they were the ransom-price of our *dear-bought*, but *unqualified* independence—an independence equal to the disputed problem of republican government and *man's capacity to sustain it*. Let us unite in supplicating that its promises may not prove deceptive.

When our independence, purchased by so much patient suffering and patriotic devotion to freedon's cause, was fully secured, the next great object was to mould the then separate colonies into a national republican government—a task only second in importance to the ordeal through which this privilege was acquired. To do this effectually, and so as to make it serve as the *ark* wherein to bear down to posterity pure and untrammeled all those great truths of human rights which warmed their hearts with confidence and fortitude from the earliest

dawn of the revolution, was a matter indeed of the most grave and serious importance—for a failure in that respect would have rendered nugatory all that had been achieved by so much blood and treasure.

But the God of our cause had not forsaken us or left us deficient. We were provided not only with arms and resolution to assert our rights, but with *men* whose *penetrative genius* and *deep-seated* patriotism could mould, arrange, and perpetuate them. Such were those who met in convention at Philadelphia, and formed our present national compact, the Constitution of these United States: a work without which the rights secured by our revolution and independence might have proved more vexatious and delusive than profitable.

With *great* and *circumspect fidelity* this work was done. Every syllable, every word, every line, sentence and paragraph was carefully, cautiously weighed and considered in the convention, before it was there passed upon and submitted to the people; and then, when so submitted, was again by the legislatures and assemblies of the people in the various States carefully reviewed, and with cautious reluctance acceded to as to some parts of it—especially as to this very right of *trial* by *jury* in *civil causes*, which was only temporarily acquiesced in by presenting certain amendments and urging their *immediate* adoption.

When, therefore, the second section of the third article, which had reference to the proposed judiciary and mode of trial, was under consideration, it was a matter of great solicitude on the part of all the delegates to adopt some mode of *trial* by *jury* in civil as well as criminal causes. But it was found exceedingly difficult, because of the different manner in which juries were constituted or employed in the different States; which gave rise to great anxiety and speculation as to how it should or could be done. No plan could be conceived that might not be exceptionable to some States, or become so in time, when the difficulty could not be got rid of without a change in the Constitution itself—a necessity which the framers of that instrument wished by all means to avoid. Indeed, the point was persisted in by some of the delegates to the last, if yielded at all; for we see that when they had progressed so far as to the engrossing and submitting, to final vote, the various clauses of the several articles and sections of the Constitution as proposed, after such protracted labor, that in considering this second section of the third article, Mr. Pinckney and Mr. Gerry moved to annex to the end: "*And trial by jury shall be preserved as usual in civil causes.*" But the same perplexities and difficulties previously suggested were again brought forward and urged with such effect as to overcome the proposition.—(See Madison's papers, 5th vol. of Elliot's Debates, page 550.)

It was therefore agreed to make *trial* by jury *positive* in criminal causes, and leave it *silent* in *civil causes*; but by no means *to negative it* in such causes. And this acquiescence was only procured by the unanimous expression of the whole convention, that there could be no danger in leaving trial by jury in civil causes in the proposed situation, as neither Congress nor any other tribunal would assume to restrict trial by jury *in all cases* where it was proper, as all had a common

interest in preserving it; and even should any be found *wicked enough*, they would *not have the audacity* or *dare* to attempt it; as they would be *promptly visited* with the *united indignation* and contempt, if not *the revenge*, of the people. It was therefore urged, it would be safe to leave the question as to jury trial in civil causes as then proposed. Hence its adoption.

But such *silent* provision as to trial *by jury* in *civil causes* by no means satisfied many of the people, who were more jealous of their rights. Wherefore the most fierce and determined resistance to the adoption of the Constitution, as proposed by the convention, was manifested in the most formidable manner in the assemblies and convention of the States, when they convened to consider and ratify the now federal compact, the work of so much patriotism and integrity of purpose, notwithstanding the confident assurance that no apprehension could be justly entertained as to the safety of life and property under the provisions as then made. But a *"bill of rights"* was positively demanded by many of the most patriotic, in addition to the Constitution, although the latter was *a written compact* granting *specific powers*, and *all powers not specifically delegated* were *reserved to the States* and *people thereof*. Yet a "bill of rights" was demanded, and *especially demanded*, because of *this very silent provision* as to *"the trial by jury in civil causes,"* and because the Supreme Court was vested with such *unbounded powers* of *"appeal* both as to *law* and *fact."* They did not feel safe in yielding so much of their *dear-bought rights*, so *unqualified* and *unrestrained*, into hands where *temptation might lead to abuse*.

They *earnestly contended* that an *arbitrary infringement* of *trial by jury in civil causes* was one of the great reasons that impelled them into a revolt against the rule of Great Britain; that such trial was best suited to the genius of a free people; that it was a safe, economical, and expeditious mode of administering justice; that they were *wedded to it as a people*, and would never yield it even under the *strongest guarantees* against abuse; that they knew their neighbors, *their peers*, who had sympathies in common with themselves, and had confidence in their intelligence and *integrity;* that they were most competent, and their decisions would render greatest satisfaction in determining *matters of fact* involving *life* or *property*, and contended that *no substitute*, however plausible, would satisfy the American people so well as trial by jury.

These objections were again met by the same persuasions and arguments which had been used by their delegates in the convention; that it was difficult in any one clause or clauses to embrace a specific system of trial by jury in civil causes, which might not, and most probably would, lead to the most serious difficulties in practical operation. That the Constitution *by no means meant to preclude it*, nor *was it precluded*. It was *only left silent*, as *no department* or *tribunal* would *dare to invade it*. That trial by jury would *never be infringed* in cases where it was applicable *in civil matters*, and was expressly protected from interference in criminal matters.

We will now invite the attention of the court to some of the objecjections, as then made and answered, touching the trial by jury in civil

causes, at the times we allude to; which will not only sustain *and more than sustains* all we assume in these remarks, but will present a wide, and we may add, a humiliating contrast between the *pure* and *exalted views* then entertained and expressed by those and their compeers who bore triumphant the cause of our freedom through the dark night of its peril, as compared with the *narrow restrictions* and *mysterious attributes* now sought to be engrafted upon the liberal and just system of government as then produced, for the protection of our rights; and will also expose the *degeneracy*, if not *the wickedness* by which it is attempted, on the part of our constituted rulers of the present day, to enforce such arbitrary burdens upon the people, under the assumed power of an *inflated sovereignty* in our government, which is nowhere to be found in the letter or spirit of the instrument which creates it.

Though it is a most melancholy necessity that drives us to prove, or sustain by argument or reference, the existence of rights deemed so indisputable till rudely assailed—rights which not one in ten thousand of those who repose under the supposed protection of our *chartered government* think for a moment could ever be brought into question, and would be startled if rightly advised of the fact—yet nevertheless 'tis true. It however affords us much satisfaction to be able to show that we are favored with a noble example founded upon sound principle, well defined, provided we have the firmness to pursue it; and that if we are willing to be degraded, and surrender our rights to the usurpations of government or political despots, we cannot say that our ancestors set us the example or engrafted the precept.

We therefore assert, upon the authorities before us, which we will presently produce, that the Congress of these United States, in any attempts they have made to trample under foot or disregard the verdict of a jury, properly rendered, in any civil cause brought by the government in its own course against a citizen, and thereby degrade and insult those very jurors whose verdict and labor would have been deemed respectable and worthy if found in favor of the government, have, by such offensive usurpation, offered to exalt this government—the creature of the peoples' will—as a *sovereign*, beyond their reach, and thereby to make them feel that their verdicts as jurors can only be respected by such *pretended sovereign* when made to suit its arbitrary will; and have, by such unwarranted assumption of despotic power, offered to exercise a control over the judiciary department of this government and jury trials, fatal to their independence and utility—utterly at variance with the intentions of those who created their office, and gave them the right to legislate—a control nowhere delegated to them, either in the letter or spirit of the Constitution they have sworn to maintain.

If this language seems severe, we invite attention to the grievous wrong and hardship against which we remonstrate, as inflicted upon the widowed petitioner who stands persecuted before you. We truly regret the necessity which, in our judgment, warrants its use. But *right*, when *oppressed*, must not be expected to flatter its *oppressor*.

PENNSYLVANIA.

When this State had under consideration the ratification of the proposed federal Constitution, it was earnestly contended by many of her delegates that *trial by jury* in *civil causes* was taken away. They, therefore, demanded to have it amended in this respect, among others, before they could consent to adopt it. Several of her ablest men urged these objections with great force.

James Wilson, a member of the federal convention, and afterwards a justice of the Supreme Court of the United States, responded in these words:

"I think I am not now to learn the *advantages* of *trial* by *jury*. It has *excellencies that entitle it to a superiority over any other mode*, in cases to which it is applicable.".

Where jurors can be acquainted with the *characters* of *the parties* and *witnesses* where the *whole case* can be brought within *their knowledge* and *view*, I know of *no mode equal* to that of *trial* by jury; they hear *everything* that is alleged; they not only *hear the words*, but they *see* and *mark* the features of the countenance; *they* can *judge* of *the weight due to such testimony*, and moreover, it is a *cheap* and *expeditious* manner of *administering justice*. There is another advantage annexed to the trial by jury; the jurors may, indeed, return a *mistaken* or *ill-founded verdict*, but *their* ERRORS CAN NEVER BE SYSTEMATICAL."

Mr. Wilson then proceeds to show why it was difficult to insert a clause in the Constitution providing for trial by jury, in all the cases to which it might be applicable, in these words:

" Let us apply these observations to the subject of the judicial department under the Constitution. I think it has been shown, already, that they extend beyond the bounds of any particular State; but, further, a great number of the civil causes, there enumerated, depend either upon the laws of nations or the marine law, that is the general law of mercantile countries. Now, sir, in such cases, I presume, it would not be pretended that this mode of decision ought to be adopted; for the law, with regard to them, is the same here as in every other country, and ought to be administered in the same manner."

In these suggestions we gather the exceptions alluded to—that is, the cases where trial by jury would not be deemed requisite, and also the sense and meaning of the framers of the Constitution as to why they made the exceptions, and the difficulties they encountered in forming a general system for "trial by jury in civil causes." Mr. Wilson then proceeded:

" There are instances in which I think it highly probable it will be found highly proper, and if it is highly probable that it will be found proper, is it not equally probable that it will be adopted?" "The Congress will have the power to make proper regulations on the subject, but *it is impossible for the convention to have gone minutely into it.*" (See 2d vol. Elliot's debates, 514—517.)

Such were the persuasions necessary to be resorted to, to induce the people of Pennsylvania to ratify the Constitution containing this *silent clause* upon *jury trials* in *civil causes;* which is far from showing that it was denied to the people in any suit or action, whoever or what-

ever might be plaintiff, where facts were to be ascertained. And much less does it furnish any ground for the assumption that *verdicts of juries*, where such mode of investigation was employed by the government itself, should be disregarded or reviewed by Congress or any other department of the government, whether *satisfied* with such *verdict* or not, except as afterwards provided in the seventh article of the amendments. For we find that they accompanied their ratification with a series of resolutions as species of a bill of rights, suggestive of matter for amendment to the Constitution, in which they even denied to the Supreme Court the power to review *matters of fact* after the same *had been ascertained by a jury*, as expressed in the following language:

"Provided that *all such appellate jurisdiction* in *all cases of* common law cognizance, as *by writ of error*, are *confined to matters* of law only."—(2d vol. Elliot's Debates, 546.)

If they were not willing that the Supreme Court should *examine the verdict of their juries* as to *facts*, is it to be presumed for a moment that they would ever have consented that Congress might do so? Or did they ever dream that Congress would desire to do so, or would ever attempt it?

MASSACHUSETTS.

In this State, when that intelligent and thinking people, jealous of their rights, and careful how they surrendered them, had, by their delegates assembled, the ratification of the federal Constitution under consideration, objections similar to those cited, because of the absence of a provision for *trial* by *jury* in *civil causes*, were strongly urged. Mr. Holmes criticised this alleged defect in the proposed system of government with severity, as did many others.

Mr. Gore responded to these assaults and objections in the following words:

"That it had been the uniform conduct of those in opposition to the proposed form of government to determine, in every case where it was possible the administration thereof could do wrong, they would do so, although it were demonstrated *that such wrong would be against their own honor and interest*, and productive of no advantage to themselves. On this principle alone have they determined *that trial by jury in civil causes would be taken away;* when it has been clearly shown, that no words could be adopted *apt to the situation* and custom of each State in this particular. Jurors were differently chosen in different States."

Mr. Dawes, a delegate, further expressing the same views, said:

"He did not see that the right of trial by jury was taken away (in civil causes) by the article. The word court does not, either by popular or technical construction, exclude the use of a jury *to try facts*. When people in common language talk of a trial at the court," "do they not include all the branches and members of said court—the *jurors* as well as the *judges?* They certainly do, whether they mention the jurors expressly or not," &c., &c.

Thus, and by this mode of argument, persuading the people of Massachusetts that all they claimed by their *proposed bill of rights* was

clearly *implied*, if not *stated* in terms, in the letter of the Constitution they were asked to ratify. But certainly they by no means comport with the assumption of Congress to disregard the verdict of a jury, as we see manifested in this case.

VIRGINIA.

In this *ancient* and patriotic *Commonwealth*, the opposition to the adoption of the federal Constitution was carried to a greater length than perhaps in any other State. This opposition was led by Patrick Henry, George Mason, and a host of others, whose love of liberty and human rights caused them to scan with *scrutinizing eye* and *jealous fears* every sentence and paragraph of the system of government they were apprehensive might swallow them up. To no point did they cling with more unyielding tenacity than to the question of trial by jury, in *civil* as well as *criminal* causes.

To pursue their cogent and well-founded arguments (especially as illustrated by the subject before us) would extend these remarks beyond any length that propriety would suggest; while to attempt a condensation would detract as much from their *merits* as their *magnitude*. We will, therefore, invite the court to a perusal of the proceedings in assembly of this State when ratifying the Constitution, as set forth at large in the third volume of Elliot's Debates, embracing the entire volume.

Let it suffice for the subject under discussion to state, that Henry, Mason, and others, objected to the Constitution because it did not properly guaranty to the American people the blessings of *life*, *liberty*, and *property;* and especially that trial by jury, so essential to the pursuit and enjoyment of those great elements of human action, was by no means well secured—*and in civil matters not at all;* that a *silent clause* or *negative* provision *was not sufficient;* that *usurpation* and *arbitrary construction* would in time hold as motive might prompt either the *appellate tribunals*, or the *legislative* or *executive* departments of its creation.

To meet these objections, so fatal to the adoption of the Constitution, if well founded, became a severe task upon the part of its advocates, as will readily appear by reference to the volume above cited. The first of those able addresses then delivered, to which we will invite the attention of the court, is that of Governor Randolph, who, after having labored to answer some other objections, proceeded to say:

"The judiciary is drawn up in terror. Here I have an objection of a different nature. I *object to the appellate jurisdiction as the greatest evil in it*. But I look to the Union as the object which guides me. When I look to the Union, objects of less consideration vanish; and I hope that the inconvenience will be redressed, and that Congress *will prohibit the appeal with respect to matters of fact*. When it respects *only matters of law*, no danger can possibly arise from it. *Can Congress have any interest in continuing appeals of fact?*" "If Congress wish *to aggrandize themselves* by *oppressing the people*, the *judiciary must first be corrupted*. No man says anything against them; they are more independent than in England."—(See 3d vol. Elliot's Debates, 205.)

These comments, it will be seen, refer to the *dangers of appeal* in matters of *fact*. Can any member of Congress who has intelligence enough to appreciate his full duty, and honesty enough to perform it, read the above remarks, and still, consistently with his oath of office, insist upon the power, or right, of Congress to review a verdict of a sworn jury? We ask this question in behalf of the aged widow, who has *begged for fifteen years, without redress, for a verdict* rendered in favor of her deceased husband. *Insulted justice cries aloud for her redress.*

Governor Randolph, in another address, in answer to the exceptions urged against the want of proper provision for trial by jury in civil causes, says:

"Gentlemen have been misled, to a certain degree, by a general declaration that trial by jury was gone. We see that in the most valuable cases it is preserved. *Is it abolished in civil cases?* Let him point his finger *on the part where it is abolished.* The Constitution *is silent on it.* What expression would you wish the Constitution to use to establish it? Remember we are not making a constitution for Virginia alone, or we might have taken Virginia for our directory. But we were forming a Constitution for thirteen States. The trial by jury is different in different States."—(See 3d vol. Elliot's Debates, 468.)

These are the expressions of a distinguished patriot, who, though not a member, was extensively consulted, and had much to do in the way of advising with the convention that framed our Constitution. In one address we see him *deploring any appeal in matters of fact.* In this we see him persuading the people that their so dearly cherished *trial by jury in civil causes is* established in spirit, if not in words. Did he ever dream that an accumulating power, then not suspected, would spring up in these latter days to reverse and annul all he so ably proclaimed in support of his cherished system of government? We answer for his memory, no!

Mr. Pendleton, supporting the same views expressed by Governor Randolph on this part of the Constitution, proceeded to enumerate the various subject-matters to which the judicial powers of the federal courts extended, and certain persons and parties in reference to which it had exclusive jurisdiction, embracing *eleven* in all, the *sixth* named of which reads:

"*Controversies to which the United States shall be a party.*"

"I believe, (says Mr. Pendleton,) it will be found they *are all causes of general* and *not local concerns.*"

"The next branch brings me to the appellate jurisdiction: and, first, I say it is proper and necessary, in all free governments, to allow appeals, *under certain restrictions,* in order to prevent injustice, by correcting the erroneous decisions of local, subordinate tribunals, and introduce *uniformity* in *decisions.* The appellate jurisdiction is, therefore, undoubtedly proper, and would not have been objected to, if they had not introduced, *unfortunately,* in this clause, "*both as to law and fact.*" Though I dread no danger, *I wish those words had been buried in oblivion.* If they had, it would have silenced the *greatest objections* against this sentence."—(See 3d vol. Elliot's Debates, 516, 517, 518.)

Again we ask, can any man who wishes to maintain the *indepen-*

dence of our judiciary, and the *integrity* of trial by jury, read the above remarks, and still insist, or concede, that it was ever intended by the framers of our Constitution that *Congress* should, under any pretence, *review a verdict of a jury?* Or, resolving themselves into a *judicial tribunal*, *re-examine* matters of *fact* deliberately *passed upon by a jury?* Does not the voice of those who helped to create their office forbid it?

In concluding our references to the proceedings in Virginia, we will call attention to the remarks made by Mr. Madison, who, it is known, was a member of the federal convention. In speaking of the many objections urged to the silent provision as to trial by jury in civil causes, he said:

"It was objected, yesterday, that there was no provision for *trial by jury from the vicinage*. If it could have been done with safety, it would not have been opposed, (in the convention.) It might so happen that a trial would be impracticable in the country," &c. "*It is a misfortune in any case that this trial should be departed from.*" "But, in the ordinary state of things, I believe that any gentleman will think that the far greater number of cases, ninety-nine out of a hundred, will remain with the State judiciaries. *All controversies* directly between *citizen* and *citizen* will *still remain with the local courts*," &c.

"*All controversies* between *citizen* and *citizen*," &c.; thus clearly showing that Mr. Madison had reference to "*controversies*" other than those where *citizens* alone were concerned; but where the *United States* would be *a party*, and *facts* were *to be ascertained*, that it would be a "*misfortune*" if trial by jury should be departed from. Do these reasonings sustain the *assumptions* of our Congress, as manifested in this case? But we shall further use Mr. Madison as authority, in another part of our argument.

North Carolina.

The attacks made upon the 2d section of the 3d article of the Constitution, touching the right of *trial* by *jury* in *civil causes*, were quite as strong, if not stronger, in this State than Virginia, though the discussion was not so voluminous. But it will be remembered they were the chief causes that led to the temporary *defeat* of their ratification of the Constitution in this State.

We quote from the 4th volume of Elliot's Debates, page 142. After they had progressed with their labors in considering the Constitution to the 3d article, and some able speeches had been made in support of it, Mr. Bloodworth, in opposition, remarked:

"Mr. Chairman: The worthy gentleman last up has given me information on this subject which I never heard before," &c. "It has ever been considered that *trial* by *jury* was one of *the greatest rights of the people*. I ask whether, if *such causes* go into the federal court, the *trial by jury is not cut off;* and whether there be any security that we shall have *justice done us?* I ask if there be any *security* that we shall have *juries in civil causes?* In criminal causes there are to be juries, but there is *no provision* made for having *civil causes* tried *by*

jury," &c. "It would give me much pleasure to hear that *trial by jury* WAS SECURED."

Mr. J. McDowell, pursuing the same objections, stated: (Ibid, page 143.)

"Mr. Chairman: The objections to this part of the Constitution have not been answered to my satisfaction yet. We know that trial by jury of the vicinage is one of the *greatest securities for our property*," &c. "And can it *be justly determined without the benefit of trial by jury?* These are things which have *justly alarmed the people.* What made *the people revolt* from Great Britain? The trial by jury, *that great safeguard of liberty*, was taken away, and a stamp duty was laid upon them. *This alarmed them*, and led them to fear *that greater oppressions* would take place. We then resisted," &c.

These objections produced a powerful effect upon the minds of the people of North Carolina, on whose soil so much of the blood of the revolution was yet fresh, keeping vigil over their actions; to overcome which required more than the best skill of the advocates of the Constitution. Mr. Spaight, who was also a member of the federal convention, in support of the proceedings of that body, said:

"Mr. Chairman: *The trial by jury* was *not forgotten* in the convention; the subject took up considerable time to investigate it. It *was impossible* to make any *uniform regulation* for *all the States*, or that would include *all the causes* wherein *it would be necessary.* It was *impossible* by one *express clause* to embrace the whole. There are a number of equity and maritime causes in some of the States in which jury trials are not used. Had the convention said that all civil cases should be tried by jury, equity and maritime cases would have been included. It was therefore left to the legislature to say in what causes it should be used; *and as the trial by jury is in full force in the State* courts, we have the fullest security."—(See 4th vol. Elliot's Debates, 144.)

Mr. Iredell, afterwards a supreme judge, in support of the Constitution, said:

"I am by no means surprised *at the anxiety* which is expressed by gentlemen on *this* subject. Of *all the trials* that ever were instituted in the world, *this*, in my opinion, *is the best*, and that which I hope *will continue longest.* If the gentlemen who composed the convention had *designedly* omitted it, no man would be more ready *to condemn their conduct than myself.* But I am told the omission of it arose from *the difficulty* of establishing *one* uniform, unexceptionable mode; this mode of trial being *different* in many particulars in the several States. Gentlemen will be pleased to consider that there is a material difference between an article *fixed* in the Constitution and a regulation by law. An article in the Constitution, however inconvenient it may prove by experience, can only be altered by an alteration of the Constitution itself—which manifestly is a thing that ought not to be done often." "Had there been an article in the Constitution *taking away that trial*, it would *justly have excited the public indignation. It is not taken away* by the Constitution. Though that does not provide *expressly* for *trial by jury in civil causes*, it does not say there *shall be no*

such trial. The *reasons* of the *omission* have been mentioned by a member of the late general convention."—(Mr. Spaight.)

Mr. Iredell then proceeds to state some of the difficulties that would attend the insertion of any specific clause for jury trials in civil causes in the Constitution; and then remarks:

"It *is not to be presumed that Congress would dare to deprive the people of this valuable privilege.* Their *own interests* will operate as an additional guard, as none of them can tell how soon *they* might have occasion for such a trial themselves," &c.—(See 4th vol. Elliot's Debates, 144.)

Mr. Iredell, further urging the sufficiency of the Constitution, as to its affording ample guarantees for jury trials in civil causes, says:

"A gentleman has said that the stamp act, and *the taking away* of trial by jury, were the principal causes of our resistance to Great Britain; and seemed to infer that *opposition* would, therefore, be justifiable on this part of the system," &c., &c. In respect to the trial by jury, its being taken away in certain cases was, to be sure, one of the causes assigned in the Declaration of Independence." "But this Constitution *has not taken it away.*" "In Great Britain the people speak of the trial by jury with admiration. No *monarch* or *minister*, however *arbitrary* in his principles, would *dare to attack* that noble *palladium of liberty. The enthusiasm of the people in its favor would*, in such a case, *produce a general resistance. That trial* remains unimpaired there, although they have a considerable standing army, and their Parliament has authority to abolish it if they please. But *wo to those who should attempt it.* If it be secure in *that country*, under these circumstances, can we believe that *Congress either would or could take it away in this?* Were they to *attempt it, their authority would be instantly resisted.* They would draw down on themselves *the resentment* and *detestation of the people. They* and *their families*, as long as they remained in being, would be held in *eternal infamy;* and *the attempt* prove *as unsuccessful as it was wicked.*"—(See 4th vol. Elliot's Debates, 147.)

But this government *has dared to invade the right of trial by jury in this very case.* It has done worse. It asserted a *false* account against James Reeside, the vigor of whose life had been spent in its service. It has dragged him into its own courts, before its own juries, and forced him to defend himself against its *pretended* claim. It has prosecuted him to the utmost extent of the law. It has failed, and has then *dared, arbitrarily dared,* to *trample* under foot *the verdict* rendered in his favor, upon the *impudent* assumption that, it being *sovereign*, cannot be reached *by the verdict* of a jury. Have we no Iredell *to rebuke* this *despotic assumption of power*, or did his *noble sentiments* die with their author?

Governor Johnson and Mr. McLane also asserted views similar to those so forcibly expressed by Mr. Iredell and Mr. Spaight, showing that "trial by jury was not taken away in cases to which it applied." We refer to their remarks.—(Ibid., 150, 151.)

But these arguments, forcible and reasonable as they are, failed to remove the watchful and jealous fears of Bloodworth, McDowell, Spencer, and others. Mr. Spencer's speech is most able, and we are

almost led to feel that he spoke with his mind's eye upon the very times in which we live, and in reference to the case now presented.

Mr. Spencer said: (4th vol. Elliot's Debates, pages 154, 155.) "The *trial by jury* has been spoken of. Every one who is acquainted with the *nature* of *liberty* need not be informed of the importance of this trial. *Juries* are called *the bulwarks* of our *rights* and *liberties*, and *no country* can *ever be enslaved*, as long as those cases which *affect* their *lives* and *property* are to be decided, in a great measure, by the *consent of twelve honest, disinterested* men, taken from the *respectable, honest yeomanry*. It *is highly improper* that any clause which regards *the security* of the *trial by jury* should be in *any way doubtful*."

With regard to that part, that the Supreme Court shall have *appellate jurisdiction*, both as to *law* and *fact*, it has been observed that though the federal court might decide *without a jury*, yet the court below that tried the cause might *have a jury*. I ask the gentlemen what benefit would be received in the suit by having a *jury trial* in the *court below*, when the verdict is set aside in the Supreme Court?" "It has been said in *defence* of the *omission*, concerning the *trial by jury* in civil causes, that one general regulation could not be made; that in *several cases* the constitution of *several States* did *not require* a *trial by jury*—for instance, in cases of *equity* and *admiralty*—whereas in others it did; and that, therefore, it was proper to leave the subject at large. I *am sure*, that *for the security of liberty they ought to have been at the pains of drawing some line*. I think that the respectable gentlemen who framed the Constitution *should have gone so far to put matters on such footing that there should be no danger*."

These and similar objections to other features of the Constitution, where the rights of the people were not properly guarded, could not be silenced or overcome by any persuasions or assurances on the part of its advocates. The people were not willing to submit so much *undefined power*, which might assume so many *arbitrary* features to the exercise of such *unlimited discretion* in the hands of Congress. The convention of North Carolina, therefore, adjourned without either *ratifying* or *rejecting* the Constitution. But before doing which, they resolved upon a *declaration* of *rights*, embracing no less than twenty distinct specifications, the twelfth of which reads:

12th. "That every freeman ought to find a *certain remedy* by *recourse* to the *laws* for *all injuries* and *wrongs* he may receive in his *person*, property, or *character*; he ought to obtain *right* and *justice freely without sale, completely*, and *without denial, promptly*, and *without delay*; and that *all establishments* or *regulations* contravening *these rights* are *oppressive* and *unjust*."

The above language, we assert, is the *true* interpretation and meaning of the Constitution; and all constructions contravening this plain intent are not only "*oppressive*" and "*unjust*," but are a *libel* and *forgery* engrafted upon the *letter* and *spirit* of our republican system to suit the *cringing purposes* of *selfish* and *designing* politicians. What a scathing rebuke does it not reflect upon the successive American Congresses, which have permitted the verdict rendered in favor of James Reeside against the government to go unadjusted for fifteen years, with no other action upon it than shifting from one committee to

another, till his destitute widow is driven to want, though constantly petitioning for relief, while they have in the meantime squandered millions of dollars upon matters devoid of all just claim upon the national treasury, but only to serve *political* and *partisan* ends. So *weak* becomes the sinews of justice, when committed to the custody of policy-pursuing hands!

South Carolina.

In this State, too, the organization of the judicial department of the proposed federal government met with the fiercest resistance. The absence of proper, express guarantees for the trial by jury in civil causes was most rigidly criticised by those who were careful how they *riveted fetters upon their hands* in the formation of their national compact. They insisted that *undefined powers* should *not* be granted *too freely* in *any form* to *any* department of the government, either *executive*, *legislative*, or *judicial;* and that trial by jury in civil causes, so *important* to the *security* of *private property* and INDIVIDUAL *rights*, should by all means be *made positive*, and left in *no equivocal* condition; that it should be *inserted in the Constitution*, and the *verdicts* of *juries* as to *all matters of fact* be made *free from appellate review*.

These grounds of objection were met by the same arguments and assurances against danger which have been herein so often repeated, that no *tribunal* or *department* of this government would *dare* to *infringe* upon the *trial* by *jury* in *civil causes*. The Hon. Robert Barnwell said:

"The honorable gentleman asks why the *trial* by *jury* was not ESTABLISHED in *every instance?* Mr. Barnwell considered *this* right of trial *as the birthright of every American*, and the *basis* of our *civil liberty;* but still, most certainly, particular circumstances may arise which would induce even the greatest advocate of this right to yield it for a time. In his opinion, the circumstances which would lead to this point *were those specified in the Constitution*," &c.

Mr. Barnwell then proceeds to point out those instances, but none of them even approximate the grounds assumed for the government in this case. As, per example: "A suit is pending between a citizen of Carolina and Georgia, and it becomes necessary to try it in Georgia; what is the consequence? Why, the citizen of this State must rest his cause upon the jury of his opponent's vicinage," &c. "It is in this case, and only in cases of a similar nature with this, that the right of trial by jury is *not* established," &c.—(See 4th Elliot's Debates, 294–'5.)

Gen. Charles C. Pinckney, of revolutionary fame, and a member of the Federal Convention, in vindicating the judiciary system he in part created, said: (See Ibid, 306.)

"As to the judiciary department, General Pinckney observed, that trial by jury was so deservedly esteemed by the people of America, that it is impossible for their representatives to omit introducing it whenever it, with propriety, can be done," &c. He then proceeds to point out several exceptions wherein juries would not be wanted, and concludes by saying: "*Trials by jury are expressly secured* in crimi-

nal cases, *and not excluded in any civil case whatever.* (Let it be remembered too, that it was General Pinckney, who, with Mr. Gerry, of Massachusetts, that offered the amendment *to include trial by jury in civil causes*, when the convention was taking *the final vote* upon the several clauses of the Constitution.)—(Supra, page 11.)

We will proceed no further with quoting from the proceedings of the various States when they were in the act of ratifying our Constitution, in which we have, perhaps, already indulged beyond any necessity for the object in view. But the question we are offering to treat upon is one of such *vast*, as well as *delicate* concern to every American citizen, that we wished to place our position as we assumed in the outset, at *the very foundation* of our system, when our *infant republic* was in *embryo* and undeveloped *by living birth*, and present the *preparatory labors* by which it was *produced* into *wholesome existence.* We wished also to place ourself beyond any suspicion of mere *local* or *restricted* limits, but to embrace the scope of our then confederacy; to do which successfully, we preferred to appeal to the *authors* and *framers* of our government, and let them speak at large for themselves. Besides, it is both *pleasant* and *profitable* to do so when they come, as they do, to our rescue with *language* and *precept* so *bold*, so *clear*, so *distinct* and *just*, as to leave us in *no* doubts as to what their meaning was, and the species of *liberty* and *rights* they so generously provided for us. They speak to us as *oracles from the grave*, pointing to the star of our proper destiny, high ascending in the heaven of our hopes—*lighting the pathway for the march of our national glory.* Will we follow their example, and assert the rights they have secured us? Or, yielding, acknowledge *their* merits, bend our necks *as slaves* to the *yoke of legislative* and *ministerial* OPPRESSION? May *their curses rest upon us if we do!*

As applied then to the question immediately before us, the avowed opinions and sentiments we have herein before quoted leave no room for doubt, that the *framers* of the Constitution did not mean, in the slightest degree, to abridge or limit the trial by jury in civil causes, where *facts* were *in dispute;* and that they meant to make no exception as to who might be the parties, plaintiff and defendant—whether government, corporation, or citizen; and furthermore, that they did not mean to allow the *verdicts* of *juries*, as to *matters of fact* to be re-examined by *any tribunal*, and that they took grave exceptions to the proposed Constitution because its language would permit *even* the *Supreme Court* of the United States to reinvestigate *any fact decided by a jury;* and, also, that neither of the departments of the general government should exercise any other powers than those *specially* delegated, and that each should keep within its own *distinct sphere of action.*

Consequently, various matters of amendment were suggested by the several States, and their adoption requested, embracing these objections and requirements, and especially that of trial by jury in civil causes; and prohibiting the verdicts of juries from being re-examined, as to *matters of fact* on *appeal.*

Amendments adopted.

Accordingly, at the meeting of the first Congress after the ratification of the Constitution, the several amendments which were called for by the people of the several States were unanimously adopted; the 5th, 7th, and 10th of which we will here insert, omitting part of the 5th, as we shall use them more specifically in a further part of our argument.

V.

"No person shall be held to answer," &c., "nor be deprived of life, liberty, or *property, without due process of law;* nor shall *private property* be taken *for public use* without *just compensation.*"

VII.

"In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury *shall be preserved;* and *no fact tried by a jury shall be otherwise re-examined in any court of the United States,* than according to the rules of the *common* law."

X.

"The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."

Wishing to keep in view for further application the connected force and meaning of the three articles of the amendments above cited, and to which we may also add the 9th article, when examining more critically the parts of the Constitution which we deem applicable to or affecting our cause, we will dismiss this portion of our argument by quoting in full sections 918 and 919 of Story's Commentaries on the Constitution, which not only come directly up to the issue, and more than sustain the principles we have been contending for, but administer a *significant* rebuke to the *unwarranted assumption of power* by Congress, in any attempts they have made to exercise *undelegated judicial powers*, and to trample under foot the verdict of a most competent and high-minded jury, rendered in favor of James Reeside, and to override such a verdict by substituting the *opinion* or *inquest of one man*, the *Auditor of the Post Office Department*, who, *twenty years ago*, when the *facts were fresh*, and *papers unburned*, with the aid of all the other *numerous officials*, who were more cognizant of the service and transactions of Reeside, could not then satisfactorily or correctly adjust his accounts, (and hence the prosecution of the suit,) as they have *oppressively* offered to do in the *magnanimous* joint resolution which passed as far as a second reading in 1852, of which *liberality* we shall have more to say in the proper connexion.

Story, when commenting on trial by jury, says:

"Sec. 918.—It is observable that the language of the Constitution is, that 'the Supreme Court shall have appellate jurisdiction *both as to law and fact.*' This provision was a subject of no small *alarm* and *misconstruction* at the time of the adoption of the Constitution, as it was *supposed* to *confer* on the Supreme Court, in the exercise of its appellate jurisdiction, the power to *review* the decision of a jury in *mere matters of fact;* and thus in effect to *destroy* the *validity* of *their verdict*, and to *reduce to a mere form* (mark these words!) the *right* of a *trial by jury* in *civil causes*. The objection was at once seized hold of by the enemies of the Constitution, and *it was pressed* with an *urgency* and *zeal* which were *well-nigh preventing its ratification*.

"There is certainly some foundation in the ambiguity of the language to justify an interpretation, that such a review might constitutionally be within the reach of the appellate power, if Congress should choose to carry it to that extreme latitude. But, practically speaking, there was not *the slightest danger* that Congress would ever adopt such a course, *even if it were within their constitutional authority*,"—(such a case as Mary Reeside's had not occurred in Story's time,)—"*since it would be at variance* with *all the habits, feelings*, and *institutions* of *the whole country*. At *least* it *might be affirmed* that Congress would *scarcely take such a step* until the people were prepared to surrender *all* the *great securities of their civil* as well as of *their political rights* and liberties, and in *such an event* the *retaining* of *the trial by jury* would be *a mere mockery*. The *real object* of the provision was to retain the power of reviewing *the fact*, as well as *the law*, in cases of *equity*, and *admiralty*, and *maritime* jurisdiction. And the manner in which it is expressed was probably occasioned by the desire to avoid the introduction of the subject of trial by jury in civil causes, *upon which the convention* were greatly divided in opinion."

"Sec. 919.—These views, *however reasonable* they may seem *to considerate minds*, did not *wholly satisfy* the *popular opinion;* and as the objection had *vast influence* upon *public opinion*, and amendments were proposed by various State conventions on the subject, Congress at its first session, *under the guidance* of *the friends* of the Constitution, proposed *an amendment* which was ratified by the people, and is now incorporated into the Constitution. It is in these words: 'In suits at common law, where the value in controversy shall exceed twenty dollars, *the right of trial by jury shall be preserved*. And NO *fact* tried by *a jury* shall be otherwise *re-examined* in *any court* of the *United States* than according to the rules of the common law.' *This* amendment *completely struck down the objection*, and places upon *the high ground of constitutional* right the *inestimable privilege* of a *trial by jury* in *civil cases*—a *privilege scarcely inferior* to that in *criminal cases*, which is conceded *by all persons* to be *essential* to political and *civil liberty*."

The amendment above cited, taken in connexion with what we have before stated, and as further expounded by the two sections quoted from Story, leaves no shadow of doubt as to the true intendment of the Constitution, but fully establishes the fact that the right of *trial by jury* in *civil causes* was not only *designed* in the first place, but is *actually secured* by the amendment to every citizen. And, furthermore

that *verdicts* of *juries* in such causes *are absolutely exempt* from *re-examination* as to *all matters* of *fact*, *even* by the Supreme Court.

Congress, it is true, is not *mentioned* in *terms*, and for the obvious reason, as stated in the convention of the States alluded to, "*they would not desire to do so*"—would not "*dare to attempt it.*" For (to repeat the language of the honorable Mr. Iredell, of North Carolina) were *they to attempt it their authority would be instantly resisted.* They would *draw down on themselves the resentment and detestation of the people.* In this, however, they are absolutely prohibited by the 9th article of the amendment, as we shall hereinafter endeavor to show.

No provision in the Constitution directly prohibiting the citizen from suing the Government.

There is no provision in the Constitution of these United States as originally adopted, nor in the subsequent amendments, which, in the least degree, tend to prohibit the citizens from suing the government. Had such a clause been inserted, it would no doubt have been wielded by its opponents most successfully against its ratification by the people—as vesting the government with an exemption only claimed by the most arbitrary despots, as an offensive badge of tyranny; and would have been sure to have met with the most stubborn resistance, however prudent and wise, or for whatever just precaution such a clause might have been inserted. The American people were not then ready, *if they are now*, to place their government beyond their reach, before their judicial tribunals, by creating a *paper monarch*, and vesting it with *royal prerogatives;* and it would have been at least political, if not social, suicide to those who should have attempted it.

We therefore find nothing which tends to negative the rights of the citizen to arraign the government before the judiciary of the country for a just demand, till the

Judiciary act of 1789.

And that act only lays the foundation for such negation by *stealthy implication.* The framers of that act doubtless felt they were treading upon questionable ground, and were very cautious how they touched it. They, therefore, only ventured to assert an affirmative position for the government to sue the citizen, and left it to *implication* to exclude the citizen from suing the government. There may have been good reasons for such an act, and the subsequent construction, that the citizen should not sue the government. It might have been that the government was then greatly embarrassed by indebtedness, and that a multiplicity of suits and judgments which must have followed would greatly have militated against the credit of the government, in its then bankrupt condition, in conducting its moneyed negotiations abroad.

We will, therefore, concede, that though departing from the *spirit*, as well as somewhat infringing the *letter* of the Constitution—for reasons we will presently state—the course then pursued by the government was *expedient* at the time, and hence wise and proper.

But we can well concede this point, either then or now, without at all admitting that any possible exemption which could, at any time, relieve the government from the attitude of being made defendant in a just cause by the citizen, could, as a necessary or rational consequence of such privilege, vest the government with power or *the sovereign right* to disregard the *verdicts* or *decrees* of its *judiciary*, when rendered against itself in matters of disputed accounts, or offsets pleaded, where it chooses to bring a civil action against the citizen to investigate such matters. Nor does any just or reasonable construction of the statute we allude to carry it to any such oppressive extent. If such deduction of accumulated operation and effect can be claimed for the act of 1789, then we assume, as stated in our 7th and 8th propositions in the beginning of this argument, that it is *unconstitutional*, as it proposes to abridge and destroy a previous vested right in the citizen, which involves the exercise of a *power* not delegated to Congress, but expressly denied under the 10th article of the amendments.

But, as we are perfectly aware of the current of usage and opinion against which we undertake to contend here, in order to sustain our position, we will first recite the act in question, verbatim, as far as applicable, and will then proceed, most candidly, to assign our reasons for expressing the opinions we hold, which have not been hastily adopted, but the result of candid and laborious investigation. If we are wrong, we will be most happy to be put right, as we take no pleasure in entertaining wrong or unjust opinions of the action of the constituted tribunals of our land.

The act reads: (Sec 1st vol. Stat. at Large, 78.)

"Sec. 11. And be it further enacted, That the circuit courts shall have original cognizance, concurrent with the courts of the several States, of all suits of a civil nature, at common law or in equity, where the matter in dispute exceeds, exclusive of costs, the sum or value of five hundred dollars, and the *United States* are *plaintiffs* or *petitioners*," &c.

The latter words, "United States are plaintiffs or petitioners," constitute the only written clause or enactment in any statute ever passed or in existence, in the shape of positive law, which, in any degree, prohibits the government from being sued as a defendant by the citizen; and this prohibition does not exist in any *express* denial, but is only claimed upon an *implied* denial—not precluded by *the letter* of the law, but *by construction*. That is to say, as it only provided *affirmatively* that the United States may sue, or may be "*plaintiffs* or petitioners," it is therefore implied *negatively* that the citizen cannot be *plaintiff* or *petitioner* where the United States are parties. It is from this *first implication*—that the citizen cannot institute an original action against the government—that is claimed and deducted the *further implication*, that, therefore, the citizen shall not *even have the benefit of* a *verdict* or *decree*, as such, for a just balance found or rendered in his favor in civil actions where the United States may be pleased to sue him in their own courts, and force him to defend an onerous suit, though ever so much against his will; thereby establishing the *unjust principle*—nay, indeed, *astounding fact*—that the United

States courts are for the benefit of the government *only*, but in no sense of the word for the benefit of the citizen where the government is a party; that the verdicts of juries in civil causes can only be respected by the government when rendered in its favor, but are of no *merit* or *validity* when rendered against the government and in favor of the citizen. What more, if you please, could the most *absolute* monarch assume!

Now, we are willing to concede, as we have already done, that there may have been necessity, and hence wisdom, in taking the ground, or observing the precautionary rule, when our country was impoverished, in the year 1789, as we emerged from the revolution with an onerous debt and empty treasury, that the government should be exempt from suits for its debts by the citizens. We are willing also to concede that (bearing in mind the necessity) Congress might, in the exercise of a sound, prudential discretion, pass such a law, and can submit to the first implication resulting from the act of 1789—that the citizen may not institute an original suit, as plaintiff, against the government; and may concede that the passage of that law was not an over exercise of the discretion vested in Congress to pass needful rules and laws for the governing of inferior tribunals; though when even indulged to that extent, it is getting beyond the letter and spirit of the Constitution. And this concession is only made upon the hypothesis (though now obsolete) that Congress would provide the citizen with another tribunal equally certain as the courts, wherein to obtain justice from the government without *harassment* or *delay*. We are willing, we say, to let the law of 1789—though straining the Constitution, as we shall aim more clearly to demonstrate—go to the extent claimed under the first stated implication. But when we are asked, as a consequence of this concession or granted implied construction of the law, to make the further and unreasonable concession, that the government may also drag the citizen into its courts at its pleasure, before *a jury of its own selection*, and force him to encounter a suit of three years' duration, (as the case in hand,) with all its machinery of officials operating against him, devolving on him a heavy loss of time and means, and then pursue him with its writ of execution to the last farthing of his property, with still further recourse upon his ample bond (as with Reeside) till it is fully indemnified; when at the same time the verdict of this court and jury, which must so affect the citizen, if rendered against the government, must *lose all its merits* and *become null and void;* when we say we are asked to concede all this, we unhesitatingly *deny the whole* of such assumption, and refuse all concession to such arbitrary implication of power, as at variance with every principle of right and reason, and a violation of that Constitution which is pledged "*to establish justice*" for protecting the rights of the citizen. For we assert that it is both tantalizing and insulting to a free-born American to tell him he is *protected* in *his right* by his government, when you at the same time propose to bind him with fetters so absolute and prostrating as the exercise of this power must furnish. The serfs of Russia, the boors of Denmark, or the thralls of Sweden, can claim quite as much, and are subject to no more. 'Tis *a fraud* in the government to attempt it, and *slavish* in the citizen to submit to it.

We therefore, in behalf of Mary Reeside, ask for and expect a full statement and exposition of that part of the Constitution, or the letter of the law, by which such extraordinary assumption of power is sustained; for, unless it be founded upon *express* law, *written* and *not implied*, we cannot give it our consent, and *force alone* can command our submission to such despotic rule. If we are pointed to the act we are discussing, (of 1789,) we answer, its letter does not carry it to such extent; and if it did, it would be a violation of the Constitution, as we have in part aimed and expect further to show. If we are called to the usages of the sixty-six years of acquiescence under that law, we ask, first, to be pointed to any instance where it has been carried to such extent as now claimed, which we deny; and secondly, we assert that, could such instance be found, it would furnish no support for its further exercise, as no usage or custom deserves respect when it ceases to be just—nor can a general usage sustain a particular wrong. Such cases always form exceptions to the usage, and are determined according to what is *equitable and just*. Usages which are ever arbitrary never cover more than comes clearly within their limits; if flexible, they must bend to the rules of right, and not grasp after wrong. If the mere acquiescence alone is relied upon, we respond, that the same principle would condemn our forefathers for rebelling against George the Third, after having acquiesced in the usages of the British crown for so much longer a period. We therefore reject the whole of such theory, and ask for something more substantial and perceptible. We wish to be advised by *truths* and not by *assumptions*, the fallacies of which, if admitted, will amply apologise for the usurpation of any power which the government may find it convenient to exercise for selfish or political purposes.

We will now proceed further to show the reasons why we deny the existence of such unbounded power in this government, and will state more specifically the precise constitutional ground upon which our denial is based. If we are wrong, we wish to be put right; and if we depart from the broad principles of the Constitution, it will be easy to expose our error; but *theoretical experiments* and subtle assumptions will not suffice to do it. We have but too much of that sort of *logic* enveloping the political issues of the day, to promise much good to the country; but when it is brought forward in our *legal forums*, to defeat *vested* CONSTITUTIONAL RIGHTS, we must object to the whole of it.

Fortunately for the integrity of our government, we have no precedents wherein the precise question and issue now made have been directly met and determined in any case where the United States were a party; nor can we find but one case where the *seventh article* of the amendments to the Constitution has been sufficiently brought into issue to elicit an opinion upon its application to jury trials: *that case* we will, in the proper connexion, present to the court. Two cases pending before this court are, so far as we know, the only ones wherein the government have hesitated to pay the verdicts of juries when rendered against itself, in any civil action it has brought against the citizen to settle disputed matters in conflicting accounts with its agents or employés; and we hope, with a patriotic solicitude for its character and respectability with the people, that they may be the last that shall ever

cast such a reflection upon its archives; that when, in any future suit, the government resorts to its own courts to settle any matters of disputed facts with any of its citizens, and its juries decide against it, and there is no longer any legal grounds upon which to re-examine the verdict, as prescribed by the common law, that Congress will proceed at once to appropriate means to pay the verdict, and not take the lead, as in these two cases, of setting the hazardous example of disregarding the verdicts of its juries—an example so alarming to the rights and best interests of the people, and so well calculated to diminish their sense of security under the government, which may in time lead to the worst of consequences—consequences which it is unpleasant to contemplate.

Having, then, no similar adjudicated case to enlighten our views, we consequently must refer to the Constitution itself, and endeavor to see how far it sustains the positions we have and may further assume, or how far it warrants the limitation of our rights in the indefinite implications which are spun out under the act of 1789, and whether that act has any constitutional sanction to defeat the verdict in this case.

The Constitution: Its objects.—Does it secure them?

The preamble of the Constitution, which is supposed to proclaim the whole of the objects for which all its subsequent clauses and provisions are intended, and provides rules to govern and secure, reads thus:

"We, the people of the United States, in order to form a more perfect Union, *establish justice*," &c., "do ordain and establish this Constitution for the United States of America."

To "*establish justice*," then, is one of the first great, persuasive, and cardinal objects proposed, (and without which it were false to the sacred trust confided to those who made it.) Justice for whom? For the people. To what end? To secure to them the blessings of *life*, *liberty*, and *property*, the essential elements of their happiness. What kind of justice? That which would sustain them in all those great enjoyments which a just God designed for his creatures. By what means? By those fixed and established laws or rules of right which should be understood and appreciated by the people themselves, as contradistinguished from the *uncertain usages* and arbitrary discretions which alone become the wily purposes of despots. Who are embraced in this great proposition? The whole American people and their posterity. To what source must we look for the dispensation of this justice? To the jurisprudence of the land. Does it in any way propose that the supreme government it creates shall be exempt from the control of this justice? Not at all; on the contrary, this proposed system of justice which they were pleased to create as the supreme government, *is itself* the *very covenant* by which it is secured to the people; and any attempt to exonerate it from, or elevate it above, this guaranty would be to *break the covenant*, and hence destroy the government itself; for it is no longer the government to which the people subscribed and created, when it disregards the rights it pro-

posed to protect, but is an imposition and fraud which vitiates their allegiance and obligation to sustain it.

Assuming this exposition as approximating the true meaning of the preamble, the great frontispiece of the Constitution, which proposes in so emphatic a manner that to "establish justice" is its great fundamental intendment, we will perceive, by looking further into its provisions, that it establishes a judiciary for that object.

The third article of the Constitution establishes this judiciary; and the second section of that article specifies *the parties* and subject matters to which such judiciary and proceedings under it shall apply. The sixth enumerated of which parties and subject matters reads:

"TO ALL CONTROVERSIES TO WHICH THE UNITED STATES SHALL BE A PARTY."

Neither to add to nor take from this language, it clearly means equal to an expression, that the United States may either be a party plaintiff or defendant, for, in either case, they are none the more nor less a party. Such is the first plain and common-sense interpretation of this clause that strikes the mind when *unshadowed* by any *subtle exceptions* in the way of *sovereign prerogative* which do not appear in the letter of the Constitution, and which would have led to its destruction before the people, had any such offensive language been inserted; for it was to rid themselves and their posterity of all *sovereign prerogatives* and *tyrannical usages*, resolved into law, at the pleasure of a *despot*, to the destruction of private *rights*, that caused our fathers of seventy-six to annul these pretensions of the British crown, and to create a written government, subject to *their will*, in the place of this *pliant discretionary royal rule*, which held *them* subject *only to its* will. Hence the great change and distinguishing feature produced between the form of government they destroyed and the one created was, to *annul* all "*lex non scripta*," and substitute *none* but "*lex scripta*;" leaving nothing to *stealthy implication* which could affect *vested individual rights*, but making all *rules* and *laws specific*, *positive*, and *written*, which were to govern or effect the same. They only gave to Congress the power to pass *all* needful laws *to regulate*, but none *to destroy* any of their private essential rights, which constitute the *true dignity* and worth of *every free born American citizen*.

But we will be told, that this government cannot be sued but by its consent. We have asked, and ask again, what clause, letter, or sentence of the Constitution says so? None, you will be compelled to say, but that such is the vested privilege of *all sovereignties*. We ask, what sovereignty? No such personage is named or recognized in our Constitution. You then go to the land of tyrants to bring us one—whether Louis Napoleon or the Czar, we don't know which. We respond, that these are the very forms of government our ancestors repudiated when they established this republic upon a written and defined basis. But we hear some one say, that *usage* has established this. We respond, as we have before alleged, *that any usage which proposes or sanctions a wrong is odious and unjust, and must cease to be respected or obeyed*. What was the use to build up a *written republic*,

and then let *usage* CAP it with a *monarchy?* Who will be so good as to explain?

If it had been the intention of the framers of our Constitution to deny to the citizen the right to sue the government, a sentence added could have made it so. But they did not do it; on the contrary, they created a judiciary, as a co-ordinate part of their proposed system to "*establish justice*" for this people, and by positive specification brought the government they so created within the control of that judiciary. "To *all controversies to which the United States shall be a party,*" without any intimation as to whether *plaintiff* or *defendant*, but "A PARTY." Who has a right to restrict this language, and say that "*a party*" in this clause only meant a party *plaintiff?* And whence his authority for so restricting it? The clause, when literally construed in its broad sense, will make the government "*a party*" defendant, and is perfectly consistent with the great object the framers of it had in view—that is, to create a system that would afford the greatest security to the people, individually and collectively, and *not* to build up a huge central government, vested with *implied royal franchises*, under the nickname of a republic.

Had the Constitution been attacked on this score—that the citizen was denied the right to sue the government for a just demand—its advocates would have come promptly to its rescue, and showed, from the language of the instrument itself, that its judicial provisions embrace "*all controversies to which the United States shall be a party;*" and that to be "*a party*" meant as well *defendant* as *plaintiff*, and thus convicted its assailants of raising captious and unwarranted objections to the plain provisions and intendments of the language set forth in the Constitution itself.

If, then, the citizen, under a fair and literal interpretation of the sixth enumerated parties and subject-matter under the judiciary clause, had the vested right to sue the government in its own courts, and there being no language or subsequent clause abridging or limiting that right—may we not inquire how far the act of 1789 can be constitutional, which assumes to narrow the broad language of the Constitution into vesting the government with the arbitrary power to sue the citizen alone, and only to be "*a party*" plaintiff at its pleasure; thus closing its judicial forums to the citizen, and through the most cursed of injustice trampling upon his rights, and reducing him to the *miserable* "*right of petition*" to seek redress for his grievances and wrongs. The most absolute tyranny admits of quite as much.

The latter part of the 2d paragraph of the 2d section of the 3d article of the Constitution, which reads, "In all the other cases before mentioned the Supreme Court shall have appellate jurisdiction both as to law and fact, with *such exceptions,* and under *such regulations,* as Congress shall make;" and which does not enlarge the power given under the 8th section of the 1st article, "to constitute tribunals inferior to the Supreme Court;" is confined within and explained by the last clause of the 8th section of the 1st article, which only says: "———To make all laws which shall be *necessary* and *proper* for *carrying into execution* the foregoing powers, and all other powers *vested* by this

Constitution in the government of the United States, or in any department or officer thereof."

These three clauses taken together do no more than give Congress the power, *and make it their* duty, to pass needful laws to regulate, carry out, and perfect the rights and powers previously vested either in the citizen or the government, but does not give them the power, under the *pretence* of *regulating* or *empowering* inferior tribunals, &c., to utterly *destroy* or *abrogate* previous *vested rights* of any species whatever. Such an act would be to alter the letter of the Constitution by abolishing its most beneficial intendments, which cannot be done by a body less authorized than *that* which created it. To do such would be to *exercise a power* not delegated to Congress in the letter of the Constitution, and therefore expressly prohibited by the 10th article of the amendments.

We therefore say, that the power to pass any law by Congress to hinder the citizen from suing the government, and make it "*a party*" defendant to a just demand, and thereby driving him from the judicial tribunals for redress, to the *mere right*, and, as by practice shown, to the *forlorn hope* of *endless petition*, when rightly considered, becomes extremely questionable—if we may not say *unconstitutional*. And well might the framers of the act of 1789 tread as light as if they felt a volcano under their feet, when they undertook to sustain the struggling finances of the government by abridging the rights of the people to whom it belonged. 'Tis well they did not carry that act a sentence further, and add: *and no citizen shall have or maintain a civil action for any demand against the United States in any of their courts*, &c.; lest the law might have been *set at defiance*, unless instantly repealed, and the authors of it *stamped with infamy*, or (to repeat the language of the honorable Mr. Iredell,) for fear "*they would*" have drawn "*down on themselves the resentment and detestation of the* PEOPLE."

We have aimed thus far candidly to investigate and discover the real or pretended grounds upon which it can be successfully claimed for the government, that it should not be held to answer before the judicial tribunals for a just demand by the citizen, and have endeavored to state our conclusions. We might elaborate and criticise to a much greater extent, and present many contrasts most unfavorable to the position assumed for the government, but could not much alter the rational effect of what we have aimed to state. We have read the Constitution over, again and again, clause by clause; we have examined everything which we have been able to find written or decided on this subject, and we are wholly unable to see that anything like sufficient authority was given to Congress to narrow the clause of the Constitution which provides so distinctly a judicial forum, and remedy for all suits, or "*controversies to which the United States shall be 'a party,'*" by saying if they meant so to do, that the United States shall only be "*a party*" plaintiff if they so choose, but shall *not* be "*a party*" defendant if they do not so choose; thereby *enlarging* the *power* of the government, and *limiting* the *rights* of the people—a system of legislation which never can be tolerated in this country, but will be driven to confusion like chaff before a whirlwind, whenever a sufficient interest is touched to arouse a general feeling. Why shall one humble citizen be forced

to suffer that which the mass would repel with scorn if provoked to action?

We have not come to the conclusions above and herein indicated, without looking with cautious attention over what has been decided by the highest tribunals of this land, and which go so far to sustain the position that the government cannot be sued. But with all due respect to those decisions, as well as their worthy authors, we are honestly compelled to say they do not change our convictions in the least degree, nor satisfy our mind that they are founded upon the true theory of this republic. Not one of those decisions confine themselves to *the strict letter* of the Constitution. They do not pretend to say that the prohibition to sue the government is founded upon any particular letter, clause, or paragraph of the Constitution. Look their decisions over as you will, and you cannot find such to be the basis upon which their theories are established. But they *all* take the broad ground that *certain inherent sovereign attributes* and *immunities* are essential to all governments; and among others, that the *sovereign* should be *exempt* from all coercion by his *subjects;* and that therefore the subjects should have no right, except by express consent, to approach such sovereign, however just may be their demand, or however grievous the injury done to their private rights; and then they proceed to prove the correctness of their theory, by bringing forward the crowned heads of Europe as examples. It is to be regretted, indeed, that such an important question, involving matters of such great concern to the American people, cannot be determined by examples of a different character; for it argues that our ancestors, after exhausting all their patriotism, wisdom, and skill, at last left their work *very imperfect;*—imperfect as to that most essential and important of all matters—that of drawing the proper lines of demarcation between the *government* and PEOPLE—of fixing the *rights* and *duties* of the latter, and the responsibility and obligations of the former—making it necessary for us to resort to sources where every man is *serf* or *slave*, to determine so important an issue.

It is strange, indeed, that after all the time, attention, and devotion to their labor—after considering and reconsidering, as they seem to have done, till they were pleased with the result of their deliberations—that the framers of the Constitution still failed to discover or provide that the government they were creating should not be sued in its own judicial forums for a just demand by the citizen, when a sentence added could have so fixed it had such been their intention. The people could then have determined whether they would or would not have accepted such a government; they then could have decided whether it was best to place their government beyond their reach, by making it a *sovereign;* or whether their then recent experience with *sovereignty* had well pleased them or not. Had this been done, and ratified by our ancestors, it then perhaps would be our duty to submit. But it is a fraud to enforce it upon us now after the covenants are sealed, and thus make the *unwritten* portion of our Constitution the *most powerful* and *controlling* of all.

Such is the precise state of the case that the decisions we allude to (and we examined all we could find) establish. They make that which is

not expressed in the letter of our Constitution paramount to all that is written; and emphatically create a "*lex non scripta*," more absolute than that which our ancestors thought they had buried when they shook of the rule of the British crown. Because they do *this*, they have failed to satisfy our judgment, or drive us from our hold upon our defined rights as planted in the letter of our Constitution, in preference to the uncertainties to which they expose us when our own written rights are relinquished.

Why should we engraft the false precepts of tyranny upon the honest work of our fathers? They have given us a Constitution, plain and intelligible, which does not address us as *sovereign* speaks to *vassals*, but persuades our allegiance by the justness of its provisions. Believing them to have done their work faithful and perfect, we prefer to abide by it. We, therefore, wish to borrow nothing from Blackstone, or any other commentators upon royal prerogatives, to found the basis of sovereign power in this country. That question was settled by our Declaration of Independence, when our sires met in solemn convention, and firmly resolved that American sovereignty rests in the bosom of no one man, with an unbounded and arbitrary discretion, but properly vested in the will of a *great people*, defined in their *written charters*, and to be dispensed according to their *written laws*, to which nothing could be supreme; and that there was not, nor could be, a sovereign power in this country to hold in contempt individual rights. No crowned head was by them recognized, presumed incapable of doing a wrong, or vested with treacherous discretion to support its royal rule. But they created for us a chartered government, pledged to "*establish justice*;" justice, *not qualified* or *limited* by *sovereign concessions*, to be *withheld at pleasure*, but *rational justice*, capable of shielding the greatest wants of a FREE PEOPLE; not an uncertain arbitrary rule—a rule arbitrary because of its uncertainty—but a rule as intelligible as it is just, and complete within itself, calling for no aid from tyrannical usages to give it force or effect. But the decisions we have examined seem to treat our Constitution as wanting in something, and that something they supplied with that which we most despise—with the exemptions of royal prerogatives.

Look for a moment before you adopt them as law. The same theories which underlay those decisions that exempt this government from suit by the citizen, will serve quite as well to drive our President from his seat, dismiss all the officers of this government, and vacate the commissions of this honorable court—because none of them are recognized by the source from whence they are derived. We cannot consent to let go our chartered rights, as defined by our Constitution, and trust to a power so boundless and indefinite—a power whose huge vortex may swallow up as well one of our vested privileges as another, and all in succession. We do not object to giving a proper consideration to the laws of any country, where they are just, and both parties are heard upon equal footing in determining the subject to which they apply; but we distrust any law where one party is heard by supplication and the other by concession. And such must ever be the case where one party stands upon its inflexible supremacy, and the other is humbled to obedience. To such condition is precisely what the law

of 1789 reduces us, according to the current of decisions rendered under it—a condition not required by any thing written in our Constitution; and contrary to the express provisions of which, we know of nothing which can justly claim to bind us. For these yet unanswered, and we believe unanswerable reasons, we deny the use of all those precepts which limit the proper rights of man, and regret that mistaken expediency should have imparted them to our republican soil under the solemn sanction in which they appear.

We ask but for our constitutional rights, and will resist to our utmost all that interpose them. Hence we have called into question the judiciary act of 1789, which, if carried so far as to deny to any American citizen the unqualified right and privilege of resorting to the judicial tribunals of his country to seek legal redress for his grievances and assert his rights, even against the government itself, is UNCONSTITUTIONAL, when thus construed, and does not deserve to be respected as an established law, because it limits the vested rights of this people, in defiance of any delegated power to do so. We may be wrong; our views may be phantoms; but if in error, we are honestly so. *We only fear we are right.*

The judiciary act of 1789, *whether constitutional or not, cannot affect or limit the rights of Mary Reeside in this case.—Reasons why we have adverted to it, &c.*

But the success of Mary Reeside in this case does not depend upon the effect to be given to the judiciary act of 1789, as prohibiting the citizen from suing the government; nor have we called in question the constitutionality of that act, as necessary to sustain the verdict found in favor of her deceased husband. Our attention has been invited to that law more particularly, because every assumed ground against the validity of the verdict in favor of Reeside falls directly back under *its* ambiguous provisions for legal sanction, and from thence branch out into an endless variety of the most plastic implications, bidding exultant defiance to all rational pursuit, making no halt till they are safely lodged around the exalted thrones of the veriest despotisms that ever *oppressed the rights of* MAN. Being there fully recognized where arbitrary associations are plentiful, they begin to speak to us in tones of *sovereign authority* and give us to understand that *sovereignties* are precious things upon this earth, and only to be got sight of through the special medium of the most *humble petition* and supplication; but to dare to approach their august presence otherwise, is next to instant death to such reckless adventurer; and as to being subject to any legal coercion, such things are not known to sovereigns! Laws and legal process are good enough for the people, to be sure, but are most disgusting to sovereign sensibilities!

That the sovereign may *occasionally* step into one of those places called courts, which they deem only fit to keep the people in order, and thus *graciously* institute suit against some refractory subject who refuses to pay tribute which he does not owe—but who, indeed, has the presumption to claim that his liege sovereign owes *him*—and by such sovereign concession permit a suit to be conducted to the *full end*, that

it may be judicially ascertained whether his *very supreme highness* may not, by such process, coerce something out of the *most abject subject;* to just such extent, courts of justice are very good institutions, according to the most approved sovereign ideas. But when those tribunals, though they feel it to be their sworn conscientious duty, venture to find that, in truth, this most exalted sovereign does stand justly indebted to the subject, so made defendant, *then* their merits cease, and they become indeed very unworthy of sovereign notice, and the verdict of the jury, or the decree of the court rendered, is *devoid* of *all validity.*

Being thus browbeat by a hidden power acknowledging neither limit nor control, we ventured to seek out its mysterious whereabouts, if to be found within the range of our written Constitution and laws; and if not there, then to discover, if possible, in the depths of what fallacies its huge proportions were moored.

The result of our investigations has not only satisfied us that there is in our written Constitution no shadow of ground upon which to deny the validity of a verdict as rendered aginst our sovereign government, where it may choose to make itself plaintiff against our fellow-citizens as defendants in any civil action, but that there is, in truth, no grounds upon which to deny that this said government shall not itself be made "*a party*" defendant at the suit of the citizen, except such as are implied under this act of 1789, which most seriously cramps the plain provisions of our Constitution, and only can borrow any absolute support from sources that would quite as affectually obliterate the whole republican features of our country, as they are equally adverse to the whole, and do not only prove that the *verdict of a jury* cannot reach a sovereign, but that legislatures cannot properly act without the same royal consent. Hence we have aimed to induct it forth from its hidden recess, and exhibit its pretensions to the light of reason, and, if not found consistent with our chartered institutions, to return it back to the regions of its nativity. We have examined it, and find it wanting in all essential consistency with our supposed free government—for such we have intended it; and as one count of our indictment, we have ventured to include that pliant law of 1789 itself, and will enter no "*nolle prosequi*" till the charges we have preferred are fully answered. *Force,* indeed, may rescue it from the moral duress to which we have assigned it, but *reason* or *justice* will *never, never!* till our chartered government is unwritten, and its most salutary provisions expunged.

We will now proceed to further show, as we have hereinbefore in part aimed to do, that though the act of 1789 may be deemed to be constitutional, or, if not strictly so, that the sixty-six years of acquiesence under it may give a sanction, that sound policy may persuade against its being expunged or repealed now; and that it may for supposed causes properly prohibit the government from being proceeded against by an original action at the suit of the citizens. All this, we say, (and which is much more secure when taken for granted than when contested,) we will allow; and still claim, conscious of the correctness of our position, that it cannot, as a just consequence of our concession, at all annul the correctness, or the binding obligation on the government, of the verdict rendered in this case. For, if in these views we are

mistaken, then indeed do we stand bowed down before a sovereign government, whose colossal proportions defy all measurement by reason or justice; but whose inflexible power has been quickened into existence by designing politicians, carrying into its sudden metamorphosis all that embraces the dearest rights of a free people; and leaves us without a hope for their being granted to us, save such as we may beg by the humblest supplication. We can willingly submit to the exercise of no such power while we remember the definition of freedom.

REESIDE DID NOT SUE THE GOVERNMENT—IT WAS THE GOVERNMENT THAT SUED HIM.

In this case we are not asking to sue the government. We are only asking the payment of a verdict of jury rendered in a suit brought by the government in its own courts against James Reeside. James Reeside was not the plaintiff, he was but the *unwilling*, and we will add *unequal*, defendant. The government, according to its self-constituted and unwritten rules and usages had him in its power. He had been its faithful servant for twenty years; with his name and character he had supported its tottering credit, and by his ever prompt and faithful negotiations brought indispensable resources to the treasury of the department under which he was acting. He claimed that it owed him a large balance, and pressed for a settlement in 1836. He could not get it. It held all the written vouchers of his services and moneyed negotiations, and advances for its use, and would not permit him to have them nor even state his account. It held *all* the information upon which it would *alone* act, and he none. Thus he was kept begging and supplicating for three years, while his magnanimous government was using the sole evidence of his rights to carry out its own purposes to defraud him, but occasionally applying to him for statements touching the transactions, with the *cunning* and *jesuitical* intent of perverting his honesty and candor into a lever for his own destruction, as it aimed to do in the sequel; but an upright judge struck down its designing audacity when it was ready to strike the treacherous blow, as the records of the proceedings most clearly prove. Notice the comments of the court in the charge to the jury in the printed record filed, extending from page 128 to 133, and you will see that our asssertion on this point is fully sustained. You will see that the court used very strong language in rebuke to the government, when rejecting its attempt to use the statements which it was pleased to coerce from Reeside in only such fractions as would serve its purpose, by adopting those items which would operate against him, and repudiating such as were in his favor. You will find on the last named page (133) this sentence: "If the defendant is called on to render an account, on which the plaintiff (the government) seeks to charge him, the account must be taken entire, and *cannot be garbled* by striking out the credits," &c. The judge did not in that case seem to have remembered that it was the *sovereign* who claimed this in addition to the many other advantages possessed over the defendant before him. We apprehend, however, a committee in Congress would have observed that momentous fact.

But we are digressing. In 1839, the government for the first time

stated Reeside's account, and brought him out in debt to it for the considerable sum of $32, 709 62; he claiming a balance against the government of some $275,000, or, making the enormous difference between the parties as then claimed, of about $307,709 62: which could leave no doubt but that there was false charging done somewhere. This difference, creating so remote a latitude between the parties, rendered a compromise out of the question; though we see from the proceedings before us that some fruitless attempts were made to effect an amicable settlement, but, as might be supposed, without effect, so that a suit became inevitable, and was resolved upon by the government. Both parties then commenced to prepare for a legal warfare; and in this behalf we are informed, and believe to be true, that it was with an understanding between the parties, that the accounts on both sides then were and for some time had been preparing with the view of being submitted to a jury; for we see in the first evidence given before the court by Mr. Washington, page No. 7, and that of the honorable Charles J. Ingersoll, page No. 46, of the printed notes of the trial in the circuit court, that our belief is well sustained. But be that particular fact as it may, it is perfectly certain that a suit was brought, and, as we will proceed to show, most fiercely contested.

On the 5th of September, 1839, the government instituted its suit in the United States court for the eastern district of Pennsylvania, against James Reeside, to recover the pretended balance in its favor; and though it had the privilege, if it chose, to have coerced a trial at the next ensuing term of the court; it also had the privilege, and in this instance exercised it, of postponing the trial till it suited its convenience to let its cause come to a hearing, which was not till the 22d of October, 1841; but in the mean time, as we have stated, occupied itself in preparing, with all its official and documentary machinery and resources, to sustain its demand. At this last-named period the government announced itself ready, when issue was joined, Reeeside pleading "*non assumpsit*" and set-off of his demand, and a select jury was empannelled. Now let us pause and examine the *status* of the parties and their respective pleadings at this period.

Is this a suit brought by Reeside against the government? Most certainly not. Is the forum and tribunal one of Reeside's electing? Not at all. Who brought him there? The government. For what purpose? To answer its demands. By what means? By the verdict of the jury, subject to the ruling and judgment of the court. How was this demand created? In the employment of Reeside by the government as its agent in transporting its mails, and negotiating large sums of money for its use. What was the issue between the parties? The *conflicting* accounts of *debits* and *credits* on *both sides;* both parties claiming a large and decided balance in their respective favor. Who were commissioned as the arbiters and umpires between the parties? The *jury* as to *the facts*, and *the court* upon matters of *law*. Were the jurors sworn or affirmed to try the issue *in whole* or in part?

Here we have a curious state of case presented; and the answer of this query brings forward a remarkable, and if right, as assumed by the government, a most odious and oppressive feature in judicial proceedings. Reeside supposed the jury were sworn to try the whole issue,

and hence directed his exertions to that end. The court and jury also believing the same, did adjudicate and decide accordingly. But the government's exposition and answer to our last query is, that if the jurors decided in *its* favor the issue they were so sworn to try, then their verdict was to be conclusive as to all the items embraced in it—the common law made open to Reeside for re-examining excepted; but if the jurors found in *favor* of Reeside, and sustaining in whole, or in part, his demand, then their verdict *was not* conclusive. That the United States would not only attack the verdict by *the common law mode*, provided in the Constitution for either party, but if that failed them too, *then* they would treat the verdict as *void*, upon the pretence that it was extra-judicial; and falling back upon their *supreme sovereignty*, claim to *re-adjudicate the verdict of their own* jury in their legislative department; that if they failed as *plaintiffs* to discover that Reeside owed them neither the whole nor any part of the enormous balance claimed in their favor, but that they justly owed Reeside a large balance, then to create themselves the auditors of their own case, wherein they were defeated as plaintiffs, and as such, graciously permit poor, down-trodden Reeside to reprove his claim, if he could, in order that they might be satisfied how much, if anything, they owed him.

Now, is not this remarkable? Is this the proper or legitimate result of a trial at law under our enlightened system of jurisprudence? Has just such a judicial outrage ever been known since civilization shed the light of justice and reason upon the laws of man? Or is there of record a precedent in the *laws* or *archives* of even the meanest of the despotisms whose sovereign attributes are so freely invoked within our republican temples to sustain this *ignoble assumption of power?* Let it be at least shown that an acknowledged and established monarchy has done the like, before our great republic is convicted of setting the infamous example. It is this blind stride of sovereign power that impels us, in behalf of our chartered rights, to so positively assail the whole of such arbitrary pretensions. We see *no justice* in it, for there is *no equality*, and equality only is *the prime essence of justice*. Sovereign *justice* we can *love*, *obey*, and *respect*, and cheerfully concede all that is proper for its support, but sovereign *villany* we despise, and will resist to the last inch in our power. When sovereignty, either republican or despotic, becomes so *self-sacred* as to rise above what is *rational* and *just*, it is but employing another means of perpetrating that which is *oppressive* and *unjust*. Why not as well tell us that *we are too abject* to *deserve justice*, as assume that our sovereign government is *so supreme* that it *rises above* justice. To precisely this point has this government elevated itself in its now assumed position to the widowed petitioner before you. If you doubt it, please look over the twelve years of congressional tergiversation upon the petition of Mary Reeside in this case, as verified by the records before you. Start from the 18th of July, 1842, the date of the first memorial, and trace the tortuous legislative circuity of action upon it, in the cycle of references from committee to committee, down to the remarkable finale they arrived at on the 8th of July, 1852, by presenting us with a report, that, according to the opinion of previous *committees* in Con-

gress, their august body was not to be reached *by the verdict of a jury*, even to the extent of creating "*a prima facie* case of *indebtedness, so as to put the government on the defensive to show that it is wrong; but it is still incumbent upon the party to establish his claim* ANEW *before Congress, or such tribunal as Congress shall designate for its adjustment,*" &c.; &c. Look upon this, we ask you, and say whether the sinews of reason are not taxed to too great a tension to bear, or whether the shrieks of lacerated justice do not warrant us in assailing, with the severest of terms, this legislative audacity? Or is the thread of *its peculiar justice* so deeply woven in the web of this legislative necromancy, that the optics of reason cannot reach it? Inspire us, oh, thou wise legislators, that we may humbly learn at the shrine of what deity thou art taught the rules of right! or is it only to be learned in political atmospheres, where *strangled justice* is ever guilty of *treason* where *policy* presides as judge; for we *swear* upon *the tombs* of their *sacred ashes* that such hideous offspring was never begot by the *sages* of seventy-six.

But says this magnanimous report, Mary Reeside was "to establish her claim anew before Congress, or such tribunal as Congress shall designate," &c. They then did move towards "designating a tribunal," and what was it? Look over the joint resolution and see. Read it carefully, and keep in your mind as you read the twelve years of pilgrimage this aged widow passed through, to sup of its liberal provision; and then learn, if you have nerves to stand it, that our sovereign Congress, who could not respect the laboriously prepared verdict of twelve of their sworn disinterested peers, resolve to submit their verdict as jurors to the revision of ONE MAN, and he the Auditor of the Post Office Department, whose predecessor, near twenty years ago, could not for his life adjust the accounts of the government with James Reeside, when facts were fresh, witnesses alive, and papers unburned, and therefore recommended the bringing of the suit, which resulted in *this verdict;* thus telling us, that while they cannot trust the integrity of the verdict of twelve honest jurors, they will be quite content to submit to one political officer of the government; that while they can and will fully respect the opinion of one politician, anointed with the magic torch of sovereign authority, their august supremacy can never listen to the honest labor of twelve upright yeomanry of the land. What a malignant legislative stab is here aimed at the very heart of trial by jury, and how dangerous its effect upon both the independence of jurors, and the integrity of their verdict. To what a miserable servitude must jurors be reduced, when sworn to try an issue where the government is a party, when they are thus advised in advance that unless their verdict is such as to suit the government's wishes, their labor will not be respected by it! Or what twelve spirited American citizens will in future consent to serve as jurors where the United States are parties, if a committee in Congress, composed of *five* or *seven* immaculate politicians, be permitted to insult them by trampling their verdict under foot? Or what is still more contemptuous, that an auditor of some of the departments may be deputised to review and revise their *patient labor*—a compliment which was conceded to the jurors by the presiding justice in this cause. Why, this Congress of

ours would have us believe that men never get to be decent or trustworthy till they are immersed in the slimy pool of politics; that the people at large were all knaves; and that Congressmen and government officials alone were honest. We can whisper in their anointed ears, however, the very decided fact that such is not the general opinion with the people at large.

But this liberal joint resolution of the 8th July, 1852, never passed into law; it only progressed to a second reading, was referred to the Committee of the Whole, and then perished, as it ought, and did not therefore obtain the sanction of a law.

WHEN THE GOVERNMENT CONSENTS TO A LITIGATION, IT IS BOUND BY THE RESULT, THE SAME AS BETWEEN MAN AND MAN.

We believe it is conceded by all the authorities on the subject, that when the government consents to be sued by the citizen, the parties stand before the court as man to man. This relation, in such instance, results from the fact that government has consented to be sued, or has consented to be a defendant in its own courts at the suit of the citizens—or, to use a more comprehensive phrase, has consented to go to law. Now, is there no other mode by which the government may consent to go to law than by special act? We conceive that there is; that the idea of consent, as manifested in this behalf, resolves itself into two propositions, and are both perfectly consistent with each other, which we think will readily appear when we bear in mind the precise attitude of the parties.

Where there is a law passed authorizing a suit, it is to the end that the citizen may sue the government; and the citizen in such case becomes the *actor* or plaintiff, and the government the defendant. Let us concede, then, as we now propose, that such an act is a prerequisite, without which the citizen, as plaintiff, may maintain no suit against the government. But we presume it will not be disputed that the government may sue the citizen without a special law for the purpose; its consent in this behalf is signified by its act. We then draw the distinction: The first is an innate consent of the government, directing its own action; the second is a granted consent by legislation, vesting certain power in the citizen to institute an action. The citizen, then, by special law, may sue the government; but the government by general law may, at its pleasure, sue the citizen. Is not the sovereign consent, then, in either case the same, only there is a different mode of expressing and applying it? In the one case, the government says—I will go to law with my citizen, in order to settle the matters of difference between us in our accounts; and in the other case, the government says—I will let my citizen sue me, in order to settle the accounts between us. Or is it to be contended that our government is dumb, unless it speaks through its legislature; that its executive and judicial departments are motionless, unless they be ordered to action by the legislative? We cannot see why this should be so, and deny that it is. We maintain that each department of our government has its innate consent, within their respective spheres, and requires no leave to express or exercise such consent. To claim otherwise

would be to make the one a burdensome clog upon the other, which would, in many instances, check speedy and essential action.

When the government goes to law *as plaintiff*, has it any less consented to the trial of its rights before its court and jury than if, by special law, it granted leave to the citizen to make it *a defendant* upon the same issue and facts before the same tribunal? Who will pretend to point out any just exception or distinction? Or to what extreme will you drive us, to escape the blight upon our rights of this sovereign sophistry? Or shall we be thus artfully but none the less decidedly informed, that the citizen shall not even assert or defend his rights when sued by the government, unless he shall have been granted special leave to do so? Is not such the precise depth of helplessness to which he is sunk, according to the practice contended for on the part of the government in this cause? What a monstrous idea! The citizens have transactions with their government; they become complex and entangled, and there is a dispute as to whom the balance is due. The government claims it, and brings a suit. The citizen, relying upon the integrity of the proceedings, and believing that he is to have the full benefit of the same decree or verdict, if found in his favor, which he is to submit to if found against him, comes forward with his energies, means and labor, to sustain and secure what he claims to be the just reward of his service performed and money expended for the benefit of his government. He has no choice in the matter; but is forced to accept the issue so tendered. He does so, relying upon the *integrity of his peers* and *the justness of his cause*. His government thus presses him to encounter a burdensome and expensive suit, carried to the last extremity of the tedious path of the law. He does so; he is triumphant—has sustained his demand in *whole* or in *part*. New trial and writ of error both exhausted, and he still maintains his victory. He thinks he is now about to receive his long withheld dues, doubly earned—first upon a valuable consideration paid or performed, and then by a protracted legal campaign. But, hold! What do we hear? His sovereign government now, for the first time, informs him—I owe you nothing; I do not recognize this proceeding; I did not *consent* that you should establish your rights—I only *consented* to test mine. I concede now that you owe me nothing; but before I can consider that I owe you anything you must establish your claim "ANEW."

The citizen, paralyzed at such oppressive audacity, ventures to ask why he shall not be paid? When he is peremptorily informed: I am your *sovereign*, and you must not presume to reach *me* with the same rules of justice which are enforced between man and man; I do not consent to such, and without my consent you can take no judgment against me in my courts. Truly, does this sort of moral philosophy become a great republic, whose chief corner-stone bears the impress to "*establish justice*" as the main object of its creation, to be thus tantalizing one of its free-born citizens, who had spent the vigor of his life in its service, but now that he is bent with the decay of age, and no longer able to serve, is to be insulted with impunity and his rights taken from him—and that, too, after he had fully established them at law? This government cannot too soon atone (so far as it now can) for such oppressive cruelty to James Reeside, by promptly rendering

to his aged widow and orphan children the full amount of the verdict found in his favor, with interest from its date. Such, and such alone, bears the semblance of justice.

But we maintain, both technically and morally, that this government not only committed itself, by every essential consent, to abide honorably and fairly the full measure of the litigation between itself and Reeside, when it of its own accord made itself *plaintiff*, and Reeside *defendant*, to the issue between them in the commencement of its suit; but that it further committed itself to and ratified the validity of the verdict and proceedings by two distinct and unqualified acts, executed in obedience to its own orders after the verdict was rendered.

The first of the acts we allude to as being a *consent* and *ratification* on the part of the government, both technically and morally conclusive, is its *motion for a new trial* after the verdict was rendered; and it was then an established and fixed fact, beyond all dispute, that Reeside owed the government nothing, and was so admitted by its counsel, who, by its authority, made this motion. The government, in this motion, did not pretend any longer to claim a balance due from Reeside, but only pressed its motion for a new trial, to try, if possible, to reduce the balance found in his favor and against itself. It admitted a large balance to be due to Reeside, but not so much as the jury had found in their verdict. This important and, we insist, controlling technical fact is settled in our favor, beyond all dispute, in the opinion of Justice Baldwin when overruling the motion, so earnestly pressed by the government, for a new trial. We will here quote from the opinion of the court the precise language used, and let it speak for itself. It will be found on page 159 of the printed record of the proceedings filed as part of this cause. Justice Baldwin says:

"With all the time and labor that could be devoted to the cause, as well out as in court, the judges could come to no conclusion other than that *a balance was justly due to the defendant*, but what was the true amount we could not say; and soon after the charge had been given, no estimate had been made by us as to the result on the items on which an opinion had been expressed to the jury by either of the judges. On the opening of the present argument such an estimate was presented by one of the counsel of the United States, by which it appears that, according to the opinion of Judge Hopkinton, there would be due to the defendant a balance exceeding $48,000, and to that of the presiding judge, say $65,000." "To this extent no objection is now made to the verdict, as inconsistent with the charge of the court; but it is considered by the plaintiff's counsel as the maximum beyond which the jury could not go, with the addition of interest, commission, &c., without running counter to the opinion of the court and the facts in evidence. But we cannot concur in that view of the case," &c., &c.

From the above language of the court we claim a clear and unequivocal acknowledgment, on the part of the government, that it was indebted to Reeside, and had submitted its full right to be tested and decided by the jury, whose verdict it now sought to limit within the bounds in which it was now willing to concede itself indebted to him. We also find therein a further strong, if not conclusive, proof of the truth of the statement ventured in the early part of this portion

of our argument; that is, there was a fair understanding between both parties, when the accounts were being made out, that they were to be submitted to a court and jury for final arbitrament and settlement. Look back to the evidence referred to of Mr. Washington and the honorable Charles J. Ingersoll, and bring it forward to the language above quoted, and consider whether we are not sustained in our belief.

If the adjudication of the court and the verdict of the jury were not intended to be final, why was there such a marshaling of facts and proof by the government to procure a favorable verdict? And then such a pertinacity, by motion and argument, to limit to a smaller amount the verdict after it was rendered? If the government did not up to that time consider itself bound and precluded by the verdict that was or should, if successful in the motion, be rendered, why was it struggling so hard to effect an alteration more favorable to its views? Having found that Reeside owed it nothing, why should it further trouble itself to abridge the amount found in his favor, unless there was then, and up to that time, both understanding and intention as to the finality of the trial? These are significant facts, full of cogent and intelligible meaning, and irretrievably commit the government, both to a previous consent to a full adjudication of its accounts with Reeside, and to subsequent ratification of the whole, the force and meaning of which cannot be denied; certainly not upon any technical or rational grounds, or any other that it would be creditable to the government to assume, (if it be at all sensible to such considerations;) for we see none unless its assumed sapient sovereignty will, in order to perpetrate so egregious a wrong upon its citizens, plead either *infancy* or *stultification*, by insisting now that it either did not know the effects of its own action, or is not willing to abide by what it wilfully done. To which horn of this disreputable and melancholy dilemma our sovereign government will now cling, in order to escape this verdict, we cannot say, or whether it will stride its huge proportions over both. We have, indeed, read of some sovereigns who never got out of their minority, and, perhaps, our government will prove itself an addition to that puny category. There is no telling to what extremes sovereigns may either rise or descend; neither the standard of right nor the breath of turpitude are sufficient to check their waywardness, at times when they are in a very omnipotent mood. Hence we may hear them speak as Solomons in one breath, and see them step into swaddling clothes the next, when some sovereign policy is to be effected. We will not, however, anticipate the branding of so burning a disgrace upon our sovereign government in this instance, but will pause till we see where it may choose to place itself.

But we have a second *consent*, acquiescence, and ratification on the part of the government to this verdict, which is *the suing out of the writ of error* after its motion for a new trial had failed. This writ of error, we see, was sued out on the 27th of July, 1842, near three months after the motion for a new trial was overruled, which was done on the 12th day of May previous. Reeside waited for the government to proceed with its pretended grounds of error till the 18th of July afterwards; but no such steps being in progress, nor any probability that there would be, Reeside, being greatly in want of his money, did, at the

last mentioned day, memorialize Congress for the payment of the verdict in his favor. On the 20th day of July, 1842, the committee in Congress, to whom was referred his memorial, advised the Auditor of the Post Office Department of the fact, with a copy of the memorial appended. This movement seemed to quicken into existence a slight fluttering in that department, in the way of getting up a real or pretended writ of error; hence we see the functionary referred to forthwith address a letter to the officers of the government at Philadelphia, urging them to concoct if possible a writ of error, which was accordingly done, and filed in court a few days afterwards, to wit, on the 27th of July, 1842, and the fact communicated immediately back to the astute auditor, who was then able, on the first day of August, just three days afterwards, to say by letter to the committee, in response to their call for information, that *a writ* of error was pending, but did not say when filed; and suggested that the committee should not act till the government should pursue its course of litigation, or should at least become satisfied that it was at an end. For the exact truth of this we refer to the correspondence of the auditor referred to with the committees, as set forth in our amended petition.

We will not here disconnect from the point just now in view, to descant upon the questionable genuineness of that proceeding, or to show from the strongest moral data that a government officer, just at that convenient moment, had that writ of error docketed in Philadelphia for the express purpose of doing the ungenerous service that it did; we mean that of checking any prompt action of the committee, which it certainly effected. We only invite attention to that significant fact, and proceed to exhibit the legitimate bearing we claim for that writ of error upon the present issue, which is this:

We claim that the issuing of that writ of error was a second overt and distinct recognition of the entire adjudication had, on the part of the government, in its suit with Reeside, and its unequivocal consent that all the matters embraced in the issue at the trial should be fully heard and determined by the court and jury: and that, up to that date, (1st of August, 1842,) the government had not thought of withdrawing its case from its courts, as we see it, by its own suggestions, militating against the committing of the cause to its legislative department; but, pursuing its first, and only fair and honest intention, was apparently disposed to further test the verdict against it, before the Supreme Court of the United States, with a view to reduce, if possible, the amount found in favor of Reeside, to within about the sum acknowledged by its attorneys to be due when they argued the motion for a new trial, which had also failed them. We claim, therefore, that the moving in this writ of error formed both a moral and technical consent and ratification to the jurisdiction of the court, to the full extent of the proceedings, which admit of no denial, even with all the abundance of sophistry with which sovereigns are ever armed; and we do not think that either *stultification* or *infancy*, or both together, can save the government from the effects of this second distinct overt act.

The verdict, we have seen, was rendered on the 6th of December, 1842. The government then proceeded with its motion for a new trial, and had time to deliberate up to the 12th of May, 1842, at which

time that effort to affect the verdict failed. It then had the further time to deliberate, up to the 27th of July, when by special orders its officials proceeded with its writ of error, which it wholly failed to carry to a final hearing.

How, we ask, is the government to escape from its own authorized proceedings, in thus giving the most emphatic consent to all the proceedings had? a consent as positive as if expressed in a thousand acts of Congress, and without any intimation of testing its claim in any other than its judicial forums. Or will the absurdity we have before combatted be contended for, that the government can express no consent in its ministerial departments except by act of Congress? Certainly the government meant to abide the result of the new trial, had it obtained one; or that, having been denied it, it must have meant to submit to the ruling of the Supreme Court upon its writ of error when sued out; for if such was not its bona fide intention, what a disgraceful fraud it must now confess it was proposing to perpetrate upon Reeside in the making of those two moves—a fraud which can meet with no sanction from any man who has the slightest respect for the principles of common justice, or who desires to see our government kept free from the just condemnation of being convicted of a meditated cheat and swindle upon one of its citizens, which, if consummated would be disreputable to the code of depravity itself. Why would our government propose to scourge James Reeside with all the labor, vexation, and expense of a new trial, supposing it could have obtained one; and, that not altering the result, then to harass him still further through its supreme tribunal by its writ of error, with the very magnanimous intention of telling him, when these dilatory proceedings were all over, that it was merely experimenting upon the law with him, but by no means with the intention of abiding the result? Why, we say, would it commit such an outrage upon a citizen, so plainly subversive of every principle of justice, and so derogatory to every noble and patriotic precept upon which it can claim an existence? Every honorable sentiment of justice is staggered into confusion at the bare supposition; and all genuine confidence in the protection of our republic to the rights of our people is sadly if not mortally wounded, when it shall so far degrade itself in the scale of national honor as to really establish the truth of so shameful a proposition. We deploringly ask, if such can be the prostituted ambition of the political jugglers of our time?

If our government did not mean to abide the result of its own proceedings, why did it bring James Reeside into its courts? Why did it bring a suit and force him to defend it, or else submit to a judgment by default, when it meant to annul the proceedings if it was defeated in its action? If it meant to allow him no benefit from his defence, why force him to make one? Why did it not, in the first instance, let sovereign Congress adjudicate his accounts with the Post Office Department, and not force him to encounter a laborious and expensive litigation from which he could derive no possible benefit? Or, if you please, why permit him to make a defence at all? For Congress says he is entitled to none of its fruits, but must establish his claim "ANEW." Who of the legislators that composed any of those "*com-*

mittees of Congress'' would dare to tell any twelve of their honest constituents that their sworn verdict was not as worthy of credit, upon an issue of fact, as the report of *five* or *seven* of their own number, or *one* Auditor of the Post Office Department? We fancy they would write before his face, a public finger-board, pointing to the pathway of his deserved political oblivion.

But we solemnly deny and repudiate the whole of such doctrine. There is no text to be found for it in the book of our fame, whose title-leaf is stamped with the blood of Seventy-six; and cursed be the hand that would write such ignoble and traitorious precept upon any one of its fair pages.

We claim, for the honor and credit of our government, that when it brought James Reeside into its courts, it done so with no other intention than that he should have an equal chance in the investigation; and, if there successful in establishing his rights, that he should have the full benefit of the result. We claim that the single fact of its going into court, and summoning Reeside there as a defendant, was and is an unqualified, positive, and proclaimed consent to all the subsequent proceedings, and therefore a consent to the verdict and judgment that was rendered. We claim that the two subsequent motions for *new trial* and *writ of error* were further distinct recognitions, ratifications, and CONSENTS to the whole of the adjudication had, and which cannot even be technically questioned now. We claim that whatever might have been the right of the government to have withheld its consent to the institution of an original suit by Reeside against it, that it had the power to and did consent to sue him, and that the consent on its part to sue was equally a consent that he should defend; that, having imposed no limit upon itself, it had no right to impose any upon him; that it set up its full demand against him, and therefore invited him to set up his against it; that it laid in court its whole claim, and joined issue with him upon his counter claim; and, by the joining in such issue, it thereby positively consented that the whole issue should be fully heard; and that the whole issue having been tried by the court and jury, and acquiesced in by the government till after the suing out of its writ of error on the 27th of July, 1842, establishes this continuing consent up to that period, and that it is not now either technically or morally competent for it to gainsay or withdraw it so as to invalidate the proceedings, except by the most wilful repudiation of its own valid acts, against which we protest as citizens who have a vested interest in its well-being.

Other constitutional guarantees to the rights of the people suggested.

Before we proceed further in our argument, there are some other constitutional guarantees to the rights of the people we wish to present. Indeed, our Constitution and its provisions create the sole anchor of our hopes for safety, if any we have, from being completely swallowed up in the fathomless gulf of legislative supremacy and power, with which our rights seem to be threatened—a *power* which acknowledges no control save that of its self-created discretion; it ignores all obedience to the established jurisprudence of the land, and

insists that the legislative is *the* power, and *sole* power, of this confederated republic; that whatever may be the rational and just rules of right between man and man, that none of those rules can advise or guide this legislative discretion. Were this not so, there would be no question to argue before this court, or at least none that could occupy a discussion of ten minutes. With what manner of patience would this court, so familiar with adjudicating upon matters of law and legal issues, listen to any argument from us to prove that the verdict of a jury, upon any issue of fact, should be regarded as conclusive, after the same had been fully tested by the common law mode of reviewing such proceedings, or after *new trial* and *writ of error* had been fully tested by the plaintiff in the action, before a tribunal competent to decide upon both, and the verdict still remaining for fifteen years (as in this case) unimpeached? We apprehend that we would be advised that our arguments were useless, and that you would sternly inquire of the adverse party why they raised such an issue now; that the time had long since elapsed when they could ask any review of the facts; and, if that were not the case, you would still be compelled to advise them that they had already sought a revision of the verdict in the *proper forum*—the *one* in which *their cause was fully heard*, and which was more competent to judge of error than you or any other tribunal could now possibly be; that their application was then rejected, when they had further sought a reversal in their favor by resorting to a writ of error which they had failed to prosecute, and, as you must presume, for the want of ability to maintain it; and that, therefore there was no question of law upon which you could now be called to give an opinion, nor would you, other than that the whole matter was "*res judicata, de facto, et lege*," and was not to be now questioned by you, unless they expected you to unsettle the whole jurisprudence of the land—a task and responsibility which you did not mean to assume. In as many or less words, would you silence our discussion—was this a question between man and man? Or, did one of the parties now before you propose to obey the same rules of law that it claims the right, and has, in many instances, enforced upon others? Or, to be more specific, did the government propose to submit to the same rules to which it subjected, or intended to subject, Reeside? Therefore, our legal precedents and authorities are of no use to us, as our government positively refuses to abide by them.

It was, and is, because of these most remarkable elements of assumed power, staring us so threateningly in the face, that caused us, in the outset of this argument, to proclaim, as we still do, that there was no question of law involved in this cause, to be passed upon as a demurrer; but that the case presents no other than a great issue of *power*, between the *government* and the PEOPLE who made it. This being the true and *sole* issue, we, therefore, have labored so hard, as we propose still further to do, to see if we cannot find, in the *very letter*, as well as *spirit*, of the Constitution, which creates and confers all legitimate powers upon any department of this government, sufficient to protect us from the most accursed of oppressions, and secure our rights from legislative extermination—a calamity which we perceive is but too plainly pending over our heads, with the ominous words of

BOUNDLESS SOVEREIGNTY written upon its front, as positive as the *black letters* of a *star-chamber edict;* unless the broad shield of our chartered rights shall prove sufficiently invulnerable to save us from the tread of this crushing weight. Hence, we cling to our Constitution with a grasp as death-like as the agonizing mariner holds fast to the last frail plank of the barque which so recently bore him in confident security over the same billows which now threaten him with speedy destruction; and to our Constitution we will cling; by its genuineness and purity we will swear to the rights it has vouchsafed to us; we will never let it go, but sink with it, rather than float upon the surface the slaves of its destroyers; for we know it will rise again, with pennant broad and bright, to scatter with confusion, upon the shoals of political ignominy, the pirates who boarded it to cruise against the rights of a people which they had sworn to protect. We see no fault in our Constitution; the error lies in its perversion by those entrusted with its administration.

We have, at another place, quoted a portion of the 5th article of the amendment to the Constitution, and will now point to the specific application we claim for it in this cause. We do, and we think justly, attach great importance to all the amendments, because they are responsive to the many objections urged against the Constitution, in its first adoption by the people, and also proclaim to us the true intent and meaning of the original instrument, of which they now form an important part. Indeed they come to us a second offspring from the same parental patriotism, supplying us with those securities in which their first production seemed defective, but who, to show us that they meant no cheat or deception, in the form of government their wisdom had provided for us, speedily supplied us with those valuable additions which soon quieted the fears of even the most suspicious. We, therefore, claim that the amendments are, to some extent, the necessary, if not the best interpreters of the whole Constitution.

The first clause in the 5th article, to which we allude, reads: "Nor be deprived of life, liberty, or *property, without due process of law.*" The government, in this case, has deprived James Reeside of his "*property* without due process of law." Not only so, but in utter perversion and violation of all law. It is true, it did not seize hold of his property and wrest it from his hands by force, which might be insisted upon as constituting an act literally within the meaning of the language of the Constitution, but it has obtained his property by means none the less decided, and, in point of principle, equally if not more culpable; because it has persuaded his property into its possession, and, after getting it there, has by force retained it, and still holds it by no other tenure.

Let us consider the facts as they exist. The government borrowed Reeside's substance, not only his substance, but with it his good name, to give itself credit. It was without credit; its drafts could not be disposed of, even at the most usurious rates, as is shown by the testimony of Samuel L. Gouverneur, (see page 9, printed Notes of Trial,) and it got Reeside to endorse them, or would borrow *his* drafts and give him *its* own; *his* drafts were negotiable in market, *its* were not. By this means, Reeside conferred credit upon the government paper, or brought

indispensable means to its support, and kept its postal machinery in operation. The government then obtained his property, not, it is true, by force direct, but by persuading his confidence that it would deal honorably with him; that it would reimburse and save him harmless. To this full extent its faith was pledged; and having thus obtained his money, as well as his service, it then violated its faith, and, refusing to comply with its most solemn and honorable obligations, forcibly appropriated *his* money to *its* use, regardless of both *legal* and *moral* duty. Such an act on the part of an individual would be termed *fraud*, *actual fraud*, and not palliated by the less offensive term of *constructive*, or *mere legal* fraud, and prompt and ample relief would be dealt out to the party aggrieved, by the judicial tribunal in whose forum a remedy was sought. Why? Because, between man and man, such would be called *justice*. What terms of censure are too severe to be applied to a *sovereign government*, claiming to be the chief fountain, source, and paternal head of all justice, which thus assumes to disregard and pervert the very laws and rules of right which it is its duty to create, observe, and enforce? Or will we be told that its supposed inviolate sovereignty, just at this convenient point, must shield it alike from the performance of duty or the reach of censure? We deny that it has any other loop-hole through which to escape, and equally deny that it is entitled to that, or can resort to it under any other sanction than that of its arbitrary power. The humble and destitute widow who petitions against such treatment, only constituting one of the twenty-five millions who have a common interest in this government, may not, it is true, be able to resist it; but her weakness makes the act of the government none the less despotic and odious; nor does that fact relieve it from an *indirect*, if not a *direct*, depriving her of her "*property without due process of law.*" The act is complete, and the clause of the Constitution we have quoted forbids it.

We claim, also, that it is equally a violation of the concluding clause of the 5th amendment, which declares, "*Nor shall private property be taken for public use without just compensation.*" We apply the same common-sense reasoning, just indicated, to this clause of the amendment, and insist that we are entitled to its most liberal application. The public have got, and are in possession of, $188,496 06 of the "*private property,*" or its representative, belonging to Mary Reeside, and have so held and used it for upwards of fifteen years—the government that long ago took it from her husband in his lifetime, and have held and enjoyed it to this day, refusing all "*compensation.*" It is true, the government took this property, in the first place, with Reeside's consent; but, having so obtained it, fraudulently denied that it so held it, and instituted suit in one of its courts to determine this disputed fact. Its own tribunal decided against it, and declared that it did hold Reeside's property to the full amount above stated. The truth of its wrongful possession was from thenceforth no longer a matter of doubt; so that its since-continued withholding has been wilful, and its consequent appropriation the exercise of *force*, without his consent, and without rendering him any "*compensation.*" That "compensation" now is, and from the day of that trial has been, due to James Reeside, or his widowed executrix and orphan children; and

is now demanded to be paid promptly over, with all the accruing damages for its detention, by the very language of the Constitution itself. The consent by which it was first obtained by the government ceased when compensation, on the part of Reeside, was demanded and denied; and its detention since has been, and is, an appropriation of "*private property to public use without just compensation,*" as positive and undeniable as if taken by force in the first instance, which the Constitution forbids, and therefore, we say, demands its prompt restoration. We claim that the last two clauses cited positively proclaim in our behalf the unqualified protection of our private property, which no department of this government can take or withhold without virtually severing the essential ligaments which bind the whole together.

In a previous connexion we suggested that we should claim some protection under the 9th article of the amendment to the Constitution from this threatened massacre of our rights. If this amendment was intended to have either meaning or force when it was incorporated as part of our governmental system, as we insist it had, and must have, unless expunged or rendered powerless by this "*progressive*" sovereignty we hear so much about, it goes far to sustain our rights in the present case, and we claim its fullest application. This article reads:

ARTICLE IX.

"The enumeration in the Constitution of certain rights *shall not be construed to deny or disparage others retained by the people.*"

This amendment is very important to the rights of the people, and the present is a case that brings it directly in point. It expressly provides, that in those cases where there is a concurrent right vested in both the *government* and PEOPLE, that the former shall not wield *its* right to the destruction of those of the latter; that the government's "ENUMERATED" rights shall not "*disparage*" similar rights "*retained by the people.*" Certainly, the protection and security of private property was and is one of the essential rights "retained by the people." It was to secure those to the fullest extent, against all abuse from whatever source, that our whole system of government was created. Among these rights we rank pre-eminent the trial by jury, in all civil suits where facts are to be ascertained and the private property of the citizen is to be affected; and it makes no difference whether the government is a party or not, or whether it could or could not, in the first instance, have been sued by the citizen; or could have driven him to any other mode to adjudicate his claim; or could have confined him to the mere right of petition, which we deny; but we do insist, that whenever the government brings the citizen into its courts, the moment the issue is joined, all previous disparity or supremacy of position or right is at once merged into a perfect equality, and that the rules of adjudication are equally open to both, and that both are to be sustained or precluded alike; that the moment the government joined issue with James Reeside, upon its full claim and his full offset, it is from that instant and henceforth, by the very language of this 9th amendment, shorn of all previous or sovereign supremacy, and

forbid to wield its "*enumerated*," much less *implied*, rights, to the "disparagement" of his constitutional and *then* specifically attached individual rights; that it was *his right* to answer and plead to the cause of the government, and establish *his claim* as so pleaded against *it*, and receive and enjoy the full benefit of the verdict or balance found in his favor. If this is not a just interpretation of the meaning of the 9th amendment, then we are at a loss to know what meaning it can have assigned it, or to what particular species of rights, either in the government or the citizen, it can apply; and shall be pleased to have some more rational interpretation and application for it pointed out, as we do insist that this clause, so full of cogent meaning, was designed to do more than merely fill up a blank space in the list of amendments; and that it does mean precisely what it says—that the "*enumerated*" rights of the government shall not "*disparage*" any *similar* or *conflicting* rights "*retained by the people*," and especially where that disparity is not requisite to carry out any of the great or essential functions or duties of the government, but is merely claimed as a technical exemption from doing what is obviously demanded by justice.

Besides this, the 9th amendment reflects a flood of the clearest light, and best proof as to what was, and is, the true meaning and intention of our whole system of government, and the great ends for which it was created, as we have contended during the whole course of this argument; that is, to *protect*, and not *oppress* the citizen; that where the citizen's rights are to be disparaged, the government's rights shall not prevail; that the people are the *true sovereign head*, and the government but the agent to protect *their rights*, and as such only vested with such absolute delegated power as shall be requisite to make that protection effectual; that it was not the intention to build up a magnificent central government, endowed with *unbounded* and *irresponsible* sovereignty, but to create a republican system for promoting the greatest happiness, prosperity, and security of a *free people*. Let the government strictly observe this principle, and it will not contend another moment in this cause, but will promptly pay to Mary Reeside the sum that it justly owes her.

The 10th article of the amendments comes also directly in point, and supports the interpretation we have given to the 9th, and fully sustains all that we assume. It declares that all "*powers*" not delegated by the Constitution to the government are retained by the "*States*" or "*the people.*" We claim for this amendment the same construction and meaning we have applied to the 9th. Indeed, the two should be construed together, as the 10th but extends the force of the 9th. The 9th, you will perceive, speaks of "*rights*," while the 10th speaks of "*powers*"—two ideas which are ever associated; and their important connexion was not overlooked, or left unguarded, by the framers of our government. When the mind dwells upon the question of *right*, the question of *power* to sustain it immediately presents itself; for the former is valueless when unsupported by the latter, and the latter is useless without a subject of right to which to apply it; therefore, the subject of *rights* and *powers* has ever been a source of perplexing solicitude to the honest legislator, in making laws to preserve the one, and properly apply the other. We know there may

be rights without the requisite power to enforce or protect them; yet the absence of such *power* does not detract from the *merits* or *justness* of such *rights*. It only proves the lamentable deficiency of the system of government, and character of civilization, under which such people have the misfortune to live. The history of the world furnishes us with plenty of examples where human rights have no other existence than by sovereign permission, and may be abridged or obliterated at sovereign pleasure; but we deny that such is our condition as a people, or that there is anything in our system of government which necessarily reduces us to such a state; and there never will be, while it is preserved and administered in obedience to its true intendment, and the wisdom and patriotism which gave it life.

Let us consider together, then, the several clauses of the amendments to the Constitution we have just been discussing; that is, the clauses in the 5th amendment, that the citizen shall not be "*deprived*" of his "*property without due process of law,*" and that his "*private property*" shall not "*be taken for public use without just compensation;*" and the plain guarantees of the 9th, that "*the enumeration in the Constitution of certain rights shall not be construed to deny or disparage others retained by the people;*" also the express declaration of the 10th, that "*the powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States, respectively, or the people.*" These clauses and articles, we insist, when thus associated and justly construed, do most clearly prove that the *people* have some rights as well as the *government*. Not only so, but that it is the special duty of the government to protect the people by passing all needful laws, and to observe and enforce them when so passed. From the same source we are able to arrive at a just understanding as to what is the proper and specific relation and reciprocal duty between *our government* and *us who are governed* by it; that it is the prescribed and pledged duty of the government to respect and protect to the fullest extent the rights of the citizens, and not embarrass, much less destroy, the same by harassing delays, equivalent to a denial of justice; or, what is still more alarming, to assume *extreme* and *unbounded sovereignty;* and, in order to sustain which, to trample under foot the plainest principles of justice, and cause the rules of right, as between man and man, to trail in the dust of oppression at its feet.

Are we right in these conclusions, or do we merely dream? Is the plainest language of our Constitution a deceptive riddle, and its strongest guarantees a mere rope of sand; or have its whole provisions become absorbed, lifeless, and expunged, in the *one* idea of legislative supremacy, and its supposed beauty and consistency degenerated into a frightful confusion? If not, then why is our government waging so fierce a war upon our rights—a war in which it can never triumph, but is certain to fall, hopelessly severed at the very first evolution of general action, which its unwise, as well as unnatural, oppression shall produce?

Bearing in mind the provisions of the 5th, 9th, and 10th articles of the amendments, and the interpretation we have assigned to each, and the relation they bear to each other, we will now call attention to the 7th article, which will be found inserted in full in another por-

tion of this argument. It was necessary to insert it at the place we did, in order to keep in view its proper force and connexion, as applied to the points we were then discussing, and we there indicated what we considered to be its just interpretation. But as we rely upon this 7th amendment as being absolutely conclusive against the rights of this court, or any other tribunal, to review the verdict in this case, and have so stated in the beginning of our argument, we deem it proper to state more fully the reasons why we did so.

The 7th amendment declares that "in suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved; and no fact tried by a jury shall be otherwise re-examined in any court of the United States than according to the rules of the common law."

"*In suits at common law*," &c., this language is full and complete, and covers all suits of the "*common-law*" cognizance. It says nothing as to parties, and therefore makes and admits of no exceptions, for exceptions are always expressed, never implied, which would destroy the efficacy of any rule, because any party might claim the benefit of the exception, so that the rule itself would apply to none with certainty.

"*The right of trial by jury shall be preserved.*" Preserved in what? In all "suits at common law" where facts are to be ascertained; no exceptions made as to who may be the parties, because all who may be parties to such suit are equally entitled to "trial by jury;" and no *fact tried by a jury* shall be otherwise *re-examined*," &c. What is meant by "fact?" The issue between the parties, as made up by their pleadings; and there is no room for exception in favor of any party who may be interested in such "fact." "In any *court* of the *United States*," &c. Why was only the term "court" used? Because the Constitution had created a judiciary to settle legal rights, and clothed it with ample power for such purposes, and did not suppose that Congress, whose powers were exclusively *legislative*, and *not judicial*, would ever attempt to act judicially upon matters of fact, or "re-examine" the verdict of any jury; and there was, therefore, no necessity for prohibiting the legislative body from examining facts on appeal, as no such appeal was ever intended to reach it. The term "*court*" is, therefore, in view of the Constitution, and the distinct organization of the three co-ordinate departments of the government, with their sepecial and separate powers and functions, tantamount to saying that no tribunal of the United States should "re-examine" *facts* "tried by a jury," "than according to the *rules at common law.*" What are the "rules at common law" for such purposes? New trial, and writ of error, both of which have been pursued and exhausted by the government in this cause, and the verdict has stood unimpeached for fifteen years, which, therefore, leaves an unimpeachable verdict in favor of Reeside by the "common-law" mode.

Now, if we are justified in this analysis of the 7th article of the amendments, may we not, with confident security from such a result, ask by what means the government can pretend to have the right to re-examine" this verdict, or the *facts* upon which it is founded, in the legislative department? Does not every rational intendment of

this amendment forbid it, as positive as language can do? Or is it the imperial pleasure of Congress to expunge the 7th amendment, in order to give room for the exercise of their unbounded sovereignty.

If the 7th amendment does not directly apply to all cases like the present, we know of none to which it can apply. It could not have been intended to apply to suits between citizens, because the State constitutions provide for them, and had so provided before the amendment was adopted, and embrace sums of a less magnitude than twenty dollars; besides there could have been no just apprehension that one citizen could so have it in his power to oppress another, as to make a guarantee in the national compact necessary; nor was such the source of fear expressed by the people when this amendment was called for and adopted. It was the alarm they felt at the immense power of the government they were creating, that prompted the people to require this additional security against oppression. It cannot apply to suits where a State is a party against a citizen, because the *eleventh* article of the same amendments excludes such cases from the federal judiciary. You say the citizen cannot sue the government, consequently there is no chance for its application there. If, then, the 7th amendment does not apply to all cases where the government sues the citizen, where, or to what case will you apply it? Or is this valuable amendment, so important to the rights of the people, actually a dead letter in the Constitution? If so, then strike it out, that it may no longer occupy a false position or deceive us as to our rights, and let us kneel at once to the majesty of congressional discretion. We apprehend, however, a check will be found in time somewhere.

But we, with confidence in the correctness of our position, deny the whole of such pretension, on the part of Congress, to review any verdict. That body has no judicial powers delegated to it, and therefore, can exercise no judicial functions without transcending its power, and hence violating the Constitution. Had it been the intention of the framers of the Constitution to make any exceptions in favor of the government, in presenting rules for governing judicial proceedings, they would have done so in terms, and fixed the limits; but they did not do it. They did not dare attempt to fix one rule for the government to enforce, in judicial proceedings, upon the people, and reserve a different one, less stringent, to be applied to itself. Had they attempted it, the people would have effectually damned both them and their system. The people were not willing, as we have before remarked, that even their Supreme Court should "re-examine" *facts*: and is it possible they would have conceded it to Congrese to do so—a body so much less competent, both from numbers and necessary attainment, besides being swayed by political policies? If Congress were permitted to review the verdicts of juries, or judgments of courts, then every sinister partisan or political influence would be thrown into the scale, and the most horrid partiality and oppression would certainly result. To prevent such, a judicial department was established; and to prevent the judiciary from trampling upon the trial by jury, by re-examining their verdicts as to facts, the 7th article of the amendment was adopted, which, we insist, is conclusive as to the whole matter.

As before remarked, we have been able to find but one case where the Supreme Court have adjudicated upon the 7th article of the amendments. That case will be found in 3d Peters, page 433, *Parsons* vs. *Bedford.* There was another case tried at the same term in which Parsons was a party. (See Parsons *vs.* Armor, &c., Ibid, 413.) Both cases were founded upon the same or similar facts. The case of Parsons *vs.* Armor, &c., was submittted to the court, and judgment or decree rendered in favor of Armor, &c.; and the case of Parsons *vs.* Bedford was tried by a jury, and a verdict rendered in favor of Bedford. Parsons appealed both cases to the Supreme Court. That tribunal reversed, for meritorious considerations, the case of Parsons *vs.* Armor, which was the decree of the court, but affirmed the case of Parson *vs.* Bedford, though the same equities attached, because it was the verdict of a jury; and faithful to the Constitution which they had sworn to maintain, they felt that they had no right to do so, because the 7th article of the amendments forbid it. The sole ground of the decision in Parsons *vs.* Bedford is predicated upon that amendment, and points, with unanswerable force, to the proper course which should be pursued by both this court and also Congress in this cause. Justice Story, in delivering the opinion of the court in that case, said, (see suprà, p. 446):

"Trial by jury is justly dear to the American people. It has always been an object of deep interest and solicitude, and every encroachment upon it has been watched with great jealousy," &c. "One of the strongest objections originally taken against the Constitution of the United States, was the want of an express provision securing the right of trial by jury in civil causes," &c. "In a just sense, then, the amendment may well be construed to embrace *all suits* that are not of equity or admiralty jurisdiction, *whatever may be the peculiar form they may assume to settle legal right.*" This is a strong case in support of this verdict, and fully sustains all that we have contended for in this part of our argument. It is true, it is not a case wherin the government was a party, but the principle laid down covers the true meaning of the Constitution, and is a proper guide for disposing of similar questions. If the highest judicial tribunal of this land, exercising the utmost plenitude of judicial power, could not consent to reverse the verdict of a jury, though equity seemed to demand it, because they were forbidden by the Constitution, can Congress, or any other tribunal, claim to do so in a case like the present, where there is no sign of fraud or injustice done to the government; but a verdict and a judgment rendered against it, in a suit of its own institution, by a jury of its own selection, upon the testimony of its own witnesses, and in one of its own judicial forums? We deny that such can be done upon any known principle of justice or law.

One more question we will present under this 7th amendment, which is this: Is this a "*court of the United*" States? and, if it is, does not the amendment in question directly forbid it, *as such*, from the re-examining of any "*fact*" tried by a jury in any case? We claim that it does; that this is a "*court of the United States*" in the strictest sense of the word, and that Congress has no right to create any other. Congress has express power "*to constitute tribunals inferior to the*

Supreme Court," but has no right to create any other species of "*tribunal,*" and invest it with judicial authority. To do so would be to exercise a "*power*" not delegated, and therefore unconstitutional; but we regard this court as a "tribunal" properly organized and possessing all requisite judicial powers. The oath taken by each member is "*to support the Constitution of the United States, and discharge faithfully the duties of his office,* and not to act subordinately to the dictates of Congress in its sworn adjudications;" and we deny that Congress has any constitutional right to revise its decisions, because that body is not vested with appellate or any other judicial powers.

The duty of Congress to appropriate money.

In our *eleventh* position, assumed in the beginning of this argument, we alluded to the clause in the 9th section of the 1st article of the Constitution, which says, "*No money shall be drawn from the treasury but in consequence of an appropriation made by law,*" and then suggested what we considered to be its proper interpretation. We deem it proper, however, in this connexion, to state more distinctly and at large the conclusions we have arrived at, after a most careful consideration of that clause of the Constitution. We feel urged to do so, because we have seen enough to know that, according to the opinions of some persons, this clause is relied upon as authorizing Congress to investigate, without regard to the functions of other departments, all matters which call for an appropriation of money by the government; a proposition which, upon the plainest principles of reason, we feel authorized in controverting, as not being the true meaning of our *national charter.*

We admit and claim, that it is proper, in all matters calling for the appropriation of money, where the subject to which it is to be applied is purely of an original or legislative character, that the right to investigate or review the merits of such matter, or the propriety of such appropriation, may be exercised by Congress to a discretionary extent, or may be withheld or rejected at pleasure. In that class of matters are embraced *all* appropriations which *depend* entirely *upon legislative action,* or which *require* legislative action, before there is an object in existence which can become the subject of an appropriation, or call for such. All such matters depend solely upon the action of Congress for their legitimate existence; and *no* other department of the government can properly take charge of them without *infringing* upon *the jurisdiction of the legislative department,* which they should *not be permitted to do.*

But we claim with equal certainty, that there *are two other departments* of this government, besides the legislative, *each* of which have an equally co-ordinate and independent existence, and exclusive control of certain *other matters* confided by the Constitution to *their* respective spheres. One of these is *the judicial department.* Without this latter co-ordinate department, our governmental system would not have been complete as it is; and without *it* had been vested with certain independent and exclusive jurisdiction, there could have been no object for creating it. Common sense teaches, and experience has

confirmed, the necessity of a judicial department in all well-regulated governments; and our Constitution has most amply provided us with one, and endowed it with all the requisite authority to control all such matters as come within its *special* judicial sphere.

To our judicial department, then, *is confided, exclusively, all matters which involve questions of law*, or in which *legal rights are to be ascertained*. When such matters are brought before the judiciary, and, there being disposed of, are presented to Congress for an appropriation, Congress have *no right to re-adjudicate the same in any shape* or *to any extent, merely* because the Constitution has devolved it upon them *to vote the money*, to liquidate such claims upon the government, before it can be drawn from the treasury. Were such the case, *then* we would have no independent third co-ordinate branch of the government, but only a nominal third department, subject to the unlimited control of the legislative department. If this were so, then there could be no *final* verdict, judgment, or decree rendered by the courts or juries, requiring money to be paid by the government, which Congress might not at its pleasure annul; which would be certain to make every man's private rights, as against his government, depend, more or less, upon what might chance to be his political sentiments or influence—a more deplorable state of case than which could not be conceived. To save our citizens from just such political servitude, and their private rights from such jeopardy, constitutes the necessity and one of the special functions of our federal judiciary.

When, therefore, a matter of disputed *rights* between the government and its citizen is brought into its judicial department, *such rights* are then within the *exclusive control of the judiciary*, and *its* action must be conclusive as to the legal question of judicial investigation, or else there is oppression without cause practiced upon the citizen. And when the judicial department has fully disposed of such matter, and found the government to be indebted, it becomes the imperative duty of Congress to appropriate money to pay such verdict or judgment, as a *debt absolute* and *conclusive* against the government, which its legislative department has no right to refuse or question. The correctness of this proposition alone sustains the fact, that our government is composed of an executive, legislative, and judicial department, *each independent*, yet *interlinked with each other*.

The power to order the payment or drawing of money from the treasury had to be confided to some one of the three departments, and it happened to be left to the legislative, which was doubtless the most appropriate one; but it certainly does not follow, that it should therefore have the power to review the actions of the other two departments, whose proceedings may have given existence to the object of the appropriation—such as *treaties* by the *Executive*, or the *judgments* of the *judicial department*.

Suppose, instead of the legislative being solely authorized to order the payment of money from the treasury, that the final order in that behalf had been confided to the judicial department, could it be conceded for a moment, or would it be contended, that the judges of the Supreme Court could have the right to *re-examine the acts of Congress*, or the *treaties* of the *Executive* and *Senate*, which might create the

subject-matter for which the appropriation was designed? We say they would not. Why? Because such would be to assume legislative or executive functions not delegated to them by the Constitution; their powers *only* being of a *judicial character*, and not to *pass laws* or *make treaties*. Why is not the reasoning just as good in the one case as the other? We therefore claim, that while there are *some cases* where appropriations are asked, which it is the province as well as duty of Congress to look into, and examine with scrutiny the subject-matter or merits of such appropriation, that there are also *others* wherein it is equally their duty to make the appropriation, when they have no right to re-examine the facts which may have given rise to the object of such appropriations. In these are specially embraced all executive treaties, and judgments or decrees of the courts, where the government is a party, after these treaties have been properly executed by the President and ratified by the Senate, or such judgments or decrees have been established by due process of law. They are then *established debts* and *obligations*, binding upon the government, which Congress cannot refuse to comply with, *except by direct repudiation*.

If their be just grounds to apprehend error or fraud in a judicial decision, rendered against the government, its *judicial forum* is *the place*, and *the laws* are *the rules*, by and through which to establish that fact; and there is no other tribunal known to our Constitution that is competent to do so. Congress, having just grounds to believe there is fraud, or error, in a decree or judgment, cannot inquire into that fact, nor, presuming it, refuse to appropriate, but must point out the supposed wrong through the proper government officers, and let *the courts readjudicate* and *test it*, both parties having an equal chance to be heard. And when the courts have fully tried or reconsidered the alleged fraud or error, by the rules of law and the proofs brought before them, and still find no grounds to impeach the judgment or verdict rendered, then their decision must be respected by Congress, and presumed to be right; and their duty to make the required appropriation becomes absolute, as being solemnly authorized by the action of an independent co-ordinate branch of the government, which the legislative has no right to revise or annul, under any pretence whatever.

In such cases as these the appropriation is demanded by the very language of the Constitution; for the last paragraph in the 9th section of the 1st article expressly declares, that it is the duty of Congress "to make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the government of the United States, or *any department* or *officer thereof*." The judiciary is a "*department thereof*," and the judges are "*officers thereof*." To adjudicate facts affecting the rights of the citizen, and render judgment thereon, is among the "*powers*" vested by "*this Constitution*" in the judiciary. And to enable it to fulfill the objects of its creation, its proceeding smust be accredited as proper and right; and when against the government, their awards, in whatever shape, must be liquidated and paid by Congress, or else they defeat the essential ends of our government, and violate the sacred trust confided to them by the *people*, whose sworn agents they are. If there is fraud, the courts must decide it; if the

witnesses are perjured, there is a penal code; if the judge or judges act fraudulently, there is impeachment for them; and Congress are the prosecutors. Our machinery of government *is complete*, and our laws *are ample;* all that we ask is a *just* and *proper administration of the whole.*

In conclusion on this point, we will add, that so far from Congress having any constitutional right to adjudicate upon or review, the *verdict* of a *jury*, or the *judgment* of *a court*, they have in reality no right to adjudicate upon private claims in any shape, which involve legal rights or questions of law. Congress may, for proper reasons, appropriate money to pay any claim they may choose, but have no right to act judicially upon such claim. We know that such has been and is the case, but that fact does not alter the Constitution. It is the mere wielding of assumed, unauthorized power, because there exists within their body physical force for so wielding it—a perversion of right which but too frequently marks the actions of both governments and men; but the *perversion does not alter the right.* Had Congress never attempted to act judicially upon private claims, but referred all matters where there was doubt as to their legality to the judiciary, and let their legal merits have been tested, then they would have performed their full duty to both the government and citizen. If the claim was pronounced legal and just, then pay it; if it was considered not legal and just, let the decree or judgment of the court be a final bar. By this means claims would not have accumulated so large; citizens would not have been deprived or kept in suspense as to the result of their rights; satisfaction would have been rendered to all, and political pressure kept out of the scales of justice. The courts, then, are the *proper forums*, the *constitutional forums*, in which to settle legal rights. Why should any civilized government, *especially a republic,* hesitate to commit its interests, in controversies with its citizens, to the adjudications of its own courts?

THE RIGHT OF PETITION—A REMEDY FOR WHAT, AND WHEN.

Having endeavored to say so much, with whatever success, upon our *constitutional rights*, we wish to add a few remarks upon *our constitutional remedies*, and more especially upon *the right of petition.* We deem it proper to do so for three reasons:

First. If we are in error in taking the stand in behalf of our rights, which we have aimed to do, upon the broad principles of our Constitution, then this right of petition is the only remedy we have left us to assert our *legal rights* against the government.

Second. To support what we have assumed as the proper interpretation of the Constitution, in regard to the protection of our *legal rights* against the government, by showing, as we think we can do, that the right of petition provided in the Constitution is, in no sense of the word, designed or prescribed as a constitutional remedy for such rights; from which, if true, would result—

Third. That the Constitution has left the citizen *without any remedy, specified* or *fixed*, for obtaining his private rights from the government; and of these three propositions we shall treat collectively.

A theme so ample and of such signal importance as this is, and in view of the extraordinary state of case we are discussing, might well tempt us to say much upon it; but as we have already prolonged our discussion upon the constitutional issues we have presented beyond what we had intended, we will limit our remarks in this behalf to as small a space as possible.

We deny, absolutely, that the American citizen has no other remedy for enforcing his just demands against the government than the *mere right of petition*—a provision which does not appear in the Constitution as *a remedy* for private rights in any shape, nor is it in any way implied where *law* and *facts* are to be determined, or the individual rights arising under the same are the subject of redress.

We are told in the preamble of the Constitution that it proposes to "*establish justice;*" and the 3d article establishes a judiciary, and provides for *all suits* or "*controversies to which the United States shall be a party.*" In the 5th amendment it is declared, that the citizen's private "*property*" shall not be taken "*without due process of law,*" nor appropriated to "public use *without just compensation.*" These provisions speak to us about "*justice*" and "*private property,*" which we shall not be "*deprived of* without *due process of law;*" and the 3d article provides for us a judicial forum in which to seek this "*justice*" and assert our legal rights; but no part of the Constitution says one word to us about our having to resort to or depend upon *the right of petition* as a guarantee or medium for securing either, or as a remedy for *private legal rights* at all. And we confidently defy any man, in any tribunal, either in or out of Congress, to point his finger to a clause in the Constitution which amounts to such, either in terms or by implication.

The only clause in the Constitution where the word "*petition*" appears in any shape is in the 1st article of the amendments, and it is then asserted as a *right*, and not proposed as a *remedy*. The clause reads:

ARTICLE 1st.—Congress shall make no law respecting the establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; *or the right of the people peaceably to assemble and to petition the government for a redress of grievances.*"

Notice the latter words—"the right of the people peaceably to assemble and to petition the government for a redress of grievances." This is an important amendment, and has a distinct and obvious meaning; but it in no degree whatever proposes a remedy for *legal rights*. It means, and no more than means, that the "PEOPLE" shall have the right to assemble at their pleasure, and petition their government for the *passage* or *abolishment* of a law that may be deemed requisite in the one case, or obnoxious in the other; and that Congress can pass no law to prohibit such assembling or petitioning. The clause evidently has reference to matters of public or general concern, in which all are supposed to have a common interest; for it says that the PEOPLE may assemble and petition against their grievances; not that an *individual shall petition for his private rights*—having reference to the *public*, and not to *persons separately*.

It will be observed that the word "*grievances*" is used, and not *rights*. There is a wide difference between the two. "*Grievances*" are those matters which affect the public, and in which all have, or are supposed to have, a common concern. *Rights* are matters which affect individuals separately, or in restricted numbers, but in which there is no common interest in the country at large. As, for instance, if Congress were to pass a general embargo law prohibiting the exportation of merchandise, which should be deemed unnecessary, and hence prejudicial to the interest of the country at large, such a law would be a *grievance*, and the people have a right peaceably to assemble and petition against the continuance of the law, or for its modification or repeal. But if a company of merchants should furnish the government with a supply of naval stores, for which payment was refused, but which they wished to enforce, such a case would present a question of *individual rights*, in which the country at large would have no immediate concern. Or there may be grievances of a much more restricted or local character, and which may illustrate the case in point. Suppose that Congress had refused to pass laws creating post routes, or extending postal facilities to the communities and localities to and through which Reeside carried the mails during his twenty years of service, or furnished the government with the means for transporting and conducting those matters; *such* a refusal, on the part of Congress, would be a *grievance*, in which those various communities and localities, or any one or more of them, would be immediately concerned, and might, in their separate or collective capacity, petition the government for the proper redress. But those postal facilities were extended to those communities and places, and Reeside performed such service, or furnished the government with necessary means to employ others to do so; and now that the government has failed to pay him for such services and expenditures, it presents a case of individual right, in which the people who derived the benefit from Reeside's acts have no concern. In the first-named cases, it is proper for Congress to determine whether the embargo is necessary to be continued, or the postal facilities are required; or, in other words, whether there exists a *national* or *local grievance*. But in the last-named cases it is a question of law and fact, whether the merchants have a *legal right* to recover for their naval stores, or whether Reeside's executrix has a legal right to recover the present demand against the government—to which they or she alone are parties or party—which furnishes an issue of individual or associated rights, in which the public at large are not concerned. We think, therefore, that there is a wide difference between *public* "*grievances*" and *private rights*.

There is another distinction proper to be observed. Where there is a *right*, there should be a *remedy;* and a *remedy*, to be such, must be fixed or definable to a certain rule, and capable of enforcement. That is, the right should be proven according to law, and, when so proven, there should be a law to enforce such rights, or else justice cannot be obtained, or relief afforded. Such alone constitutes a *remedy*.

The *right of petition* is *no remedy* for anything. It is merely the right to petition for a *remedy*, or, in other words, the privilege to supplicate for that which the party supplicated may *grant*, or *withhold*,

at pleasure. It therefore falls essentially short of a remedy. The beggar in the street may ask you for alms; he may supplicate your charity, but you may grant him relief or not, as you choose; he has no remedy to force you to alleviate his distress. But, if he claims that you justly owe him the amount of the alms asked, he should have the legal means to test the fact, and a legal remedy to enforce the payment of the same, if found to be due. Hence we see that there is quite as great a difference between the *right of petition,* or supplication, and a *remedy*, as there is between "*grievances*" and "*rights;*" that there is just as wide a difference between each, as there is difference between nations or communities, and the individual citizens that may compose them; and that the fact that "*grievances*" may attach to a few, or one, and a *common right* may vest in many, does not disturb or lessen the difference. *The right of petition*, therefore, we have said, and still say, *is not a remedy* for private rights.

This conclusion, then, brings us to a serious question—a question which probes to the very bottom of our whole fabric of government—which is this: Have, or not, the AMERICAN PEOPLE a *remedy* for enforcing their private rights against their government, or have they *only* the privilege to *supplicate* for a remedy? We have been laboring during the whole course of this argument to prove that they have such remedy, and hope we have succeeded. If we have not, we could gain nothing by reiterating our oft-assumed and elaborated positions.

Guided by our best intelligence and most patriotic hopes, we cannot concede such to be the helpless condition of *this people.* We deny that our ancestors have perpetrated upon us any such deception or swindle, or that their wisdom and sagacity wholly failed them in that the sole object for the creating of any government—the protecting the rights of the people, and providing a remedy for enforcing them. We have said, and have proved by the records of the past, that the causes which led to our revolution was the abuse of our private rights by the king of England, as advised by his selfish, rapacious ministers. Our ancestors claimed to have inherited from *Magna Charta,* and the *common law, legal rights* and *certain remedies.* The violation and denial of these led them to revolt. Every page of the history of that noble struggle proclaims these facts, and every drop of blood that was shed has sealed and sanctified upon the altar of liberty their *sacred* truth. When victory had crowned their arms, and they assembled to execute covenants to vouchsafe to us the blessings we enjoy, they inscribed in the title-paragraph the solemn pledge to "*establish justice*" as the *eternal birthright of a free people,* and created this government for that *sworn* and inviolate purpose. From thence we derive hope, and believe it to be true, that, in the Constitution they drafted, they did provide for us a *certain* and *effectual remedy* for our *private rights,* and that it extends to all cases like the present; and shall deem it a *sad* blow to our supposed happy land, that any man shall be able, by precept or analysis, *false* or *fair,* to prove that we have not a *full, ample,* and *legal* remedy against our government for every species of right. Such an achievement might be a triumph in logic, but no tribute to the merit of our institutions, or their title to our confidence as a people.

There is a recorded fact just at this point inviting our attention, the

unanswerable force of which must not be overlooked. It is this: The word *petition*, we have said, and which is true, does not appear in our Constitution in any shape till the adoption of the amendments. It then was asserted, in the connexion and purport we have quoted, in the first article. If, then, we are not right in what we have assumed, both as to the *rights* of *petition* and *remedy*, we must come to the shocking conclusion that our Constitution, as originally drafted and adopted by the people, was actually devoid of every species of *remedy* for private rights; that notwithstanding all the labor, skill, and watchful attention bestowed by our ancestors upon the responsible task they were performing, and although it was their sworn duty and special purpose to draft a form of republican government that would afford the greatest security to *life*, *liberty*, and *property*, nevertheless they *wholly* and *signally* failed to do so; that they left unguarded *private property* entirely, in the Constitution as first submitted to and ratified by the *people*, and that it was only when the latter, by clamor and opposition, demanded the amendments, that any species of protection was provided, and then only giving us leave to *supplicate* by *petition* for a remedy.

Shall such reproach be cast upon the framers of our Constitution? Or does such a stigma justly attach to their labor? Who is so ambitious as to wish to prove such error in the one, or demerits in the other? If it could be done, like the triumph of the suicide, it would but prove the ability for self-destruction, and the willingness to use it—an act alike false, both to our God and posterity. We deny such a lamentable defect exists in the original draft of our Constitution. We claim that it meant to and did provide us with a *certain* and *legal remedy* for our rights, and rely upon the clause and paragraphs we have cited as record proof of our position.

It could not have been the wicked intent of the originators of our system of government, after having endured the bloody ordeal of *seventy-six*, to assert and secure that protection to life and property proclaimed by *Magna Charta*, and engrafted upon the common law of England, which they claimed to be their birthright, to actually diminish those essential securities for which they so fiercely contended, and of which they must be convicted, either by *intention* or *omission*, unless we are fully sustained in our argument. Because, as we shall now proceed to show, that both *Magna Charta* and the *common law* provides certain *legal remedies* for *legal rights*, as against the government of England. Every English subject is entitled to his "*petition de droit*," or the more modern proceeding of "*monstrans de droit*," against the king for every legal demand.

This proceeding, though technically considered as by the *consent* of the king, it is nevertheless a consent which he dare not, and never withholds; and, therefore, deserves to be held, as by practice proven, *an actual legal remedy against the king in favor of the subject*. When the subject has a demand for money against the king, and presents his "*monstrans de droit*," the sovereign at once says, "*Let justice be done;*" and the case proceeds before the judicial tribunals the same as between subject and subject. No occupant of the British throne, or minister, would now dare controvert this *legal right* of the English subject; nor

has it been done since the time of the celebrated "case of the bankers," in the reign of William the Third, in the year 1701, which resulted in the triumph of the bankers in their case, and gave rise to one of the articles of *impeachment* preferred against the Lord High Keeper, John Sommers, at that time.

"*The case of the bankers*" is somewhat similar to the present: it was a suit against the crown, and an effort to enforce the judgment in favor of the plaintiffs. A full detail of the civil actions had, pro and con, will be found in various of the English reports. We here quote from the criminal proceedings upon the articles of impeachment subquently preferred by the *commons*, and prosecuted before the House of Lords; and will only quote so much of the civil action as will connect the two so as to present the points we have stated.

In this case certain English bankers had long been in the habit of loaning large sums of money to the crown, as a means of investment, and took an assignment or hypothecation of certain crown revenues as a pledge for the payment of the principal and interest, upon "*tallies*" and "*orders of the exchequer*," from time to time issued. In the reign of William the Third, the English government being engaged in a "*war with the Dutch*," and the crown revenues becoming much exhausted, the king "*resorted to the violent expedient of shutting the exchequer;*" which was executed by postponing the payment there on orders before issued," &c.

The *bankers* finding that the king had broken his word, proceeded by "petition to the barons of the exchequer, for payment of the arrears of the annuities granted," &c. After a full hearing of the cause upon "*demurer*" on the part of the crown, a "*judgment was given for the petitioners, by directing the payment to the complainants at the receipt of the exchequer.*"

A writ of error was brought on this judgment by the attorney general in the exchequer chamber," where the judgment was reversed in favor of the crown by the joint opinions of the "Lord Chief Justice Treby and the Lord Keeper John Sommers," who held that the bankers had no right to maintain their suit as brought. Upon this judgment the bankers appealed "to *Parliament*, and there *the lords reversed* the judgment of the *exchequer chamber*, and *affirmed* that of *the exchequer*;" and gave a final judgment for the principal sum and interest due to the bankers.

After all these proceedings were ended, articles of impeachment were preferred against various persons of high position, for alleged fraudulent and oppressive conduct, and among whom was included the Lord Keeper John Sommers. The charges preferred against the latter named *dignitary* embraced in all fourteen articles, in the last one of which it is charged in these words:

"XIV. That the said John Lord Sommers, to the great oppression of the subject, and contrary to magna charta, and divers good statutes of this realm, and in manifest breach and violation of his office, as Lord High Chancellor of England, hath, in several causes depending before him, by extraordinary methods and unwarrantable practices, for several years delayed proceedings in the said causes; and by color of his office hath made divers arbitrary and illegal orders, in subver-

sion of the laws and statutes of this realm; and hath by his own authority reversed judgments given in the court of exchequer, and without calling before him the barons of the exchequer to hear their informations, and the causes of their judgments, as the statutes in those cases expressly direct, assuming thereby to himself an *arbitrary* and illegal power; *and hath declared and affirmed in places of public judicature, that particular subjects might have rights and interests without any remedy for recovery of the same, unless by petition to the person of the king only, or to that effect, which position was highly dangerous to the legal constitution of this kingdom, and absolutely destructive to the property of the subject.*"—(See statement of the Bankers' case, from pages 1 to 4, and the articles of the impeachment, pages 261, 263, 14th vol. Howell's State Trials.)

Here we have a case replete with the most valuable and instructive *political law;* a case wherein the subject triumphed over the king of England: where a judgment at law was maintained, and the crown revenues subject to its payment; where the *mere right of petition* was scouted from the courts of judicature, and the *validity* and *supremacy of legal rights* maintained; where justice, armed with the power of enlightened laws, struck down the presuming audacity of arbitrary power; and the tyrannical minister who dared to advise oppression, was made to answer to an ignominious charge, which he had to deny upon oath, and which labored him hard to escape the severest of penalties, for barely asserting, in the heat of discussion, that the English subjects had not *legal remedies* for their *legal rights*, even against their *crowned monarch*, who sat upon his throne in the plentitude of *royal prerogative.*

There are many important and valuable rules of law laid down by the various justices, who gave opinions in the Bankers' case, which concur in maintaining the indubitable right of the English people to the fullest protection of their private rights and property by the common law of England. But we cannot so far enlarge as to introduce them here; but, to further the strength of our argument, will quote a few sentences from the opinion of Chief Justice Holt, which embraces the final conclusions arrived at by all the judges, (Sommers and Treby excepted,) and which on final appeal was confirmed by the House of Lords, as we have shown. Justice Holt said, (see 14 Howell, supra, page 34:)

"I come now to the second point, and this is concerning the remedy taken by the patentees.

"And I hold they have taken a very *proper* and *legal* remedy. *We are all agreed that they have a right, and, if so, then they must have a remedy to come at it too.*

"The remedies at common law to recover against the king were by petition or '*monstrans de droit.*'

"But, first, a petition of right is not necessary in this case; not but that a man may proceed in this way, and admit himself out of possession if he so pleaseth, but it is not necessary, for two reasons:

"1st. Because petition of right is grounded always upon a naked matter of fact suggested *and not of record,* and upon such suggestion there is a commission issues out of chancery.

"But here the title is derived by letters patent which are of record, so that there is no matter of fact to be inquired of.

"2d. The patentees do not endeavor to destroy the king's title; but petitions of right do so, and are generally inconsistent with the king's title.

"I take this remedy to be by *monstrans de droit*, and this remedy is to be sued out at common law, when the parties' title appeared of record. Kell, 178. Monstrans de droit, or *ouster le main*, (which are all one in effect,) always lies where the title or right of the subject appears, as well by matters of record as the king's title, and this appears fully.—(Saddler's case, 4 Rep. and Hob. 334.)

"Also it is plain that a *monstrans de droit* lies in the exchequer; I think there is no doubt of that.

"It is objected that the petition should be first sued to the king; but in the records in Ryly's Placita, Parl. 351, 257, Stanndf. 72, it appears that these petitions of right have been sued to the court of King's bench. But, indeed, this petition differs from those; for this being only by way of complaint, there *needs no endorsement as in other cases*. That is, it does not even require the endorsement, '*let justice be done.*' "

In this case we see it was agreed that the bankers had a right.

Who will deny that Mary Reeside has a right in the present case?

The bankers having a right, it was declared they should "have a remedy to come at it too."

Why shall not Mary Reeside have a remedy to come at her right?

The bankers found their remedy in the common law of England.

Why shall not Mary Reeside find a remedy in the American common law for sustaining her demands?

The bankers, having a right of record, were not required to petition the king, but were sustained in bringing their *monstrans de droit*, which their sovereign was bound to answer and obey.

But Mary Reeside has a *verdict* of a *jury*, confirmed by the *judgment* of a United States tribunal, and hence a *right of record* which has stood for fifteen years; still she is told that the American *Constitution* and *laws* afford her no legal sanction for obtaining it.

The Lord High Chancellor of England was subject to articles of impeachment in the year 1701, for barely asserting in debate that the bankers had no other remedy for their rights than by petition to the king.

But our *proud republic* in this the year 1856, declares that the American citizen has no means for getting his rights from his government except by *petition;* which we think we have shown is *no remedy*, but at best *merely the right* to *supplicate* for a remedy.

Is not such a most shocking and humiliating fact to be announced to a *great nation*, which boasts of its *freedom*, its *Constitution*, and *laws?* Is this the result of our revolutionary struggle? Are these the fruits of our Declaration of Independence? Or is such the true interpretation of a Constitution which promised to "*establish justice*" for a free people? Who has the singular ambition to wish to make it so appear?

We deny that it can be done, except by a perversion of our national

charter, as pernicious as false. We have shown that even this word *petition* does not appear in our Constitution, as originally adopted. We cannot admit that it was the intention of the framers of that instrument to leave us without any remedy for enforcing our private rights against the government; and, unless they are convicted of such error, we are fully sustained in our position, that petition to Congress is not, nor ever was intended to be, our remedy in such cases. The right of petition for any purpose, as we have shown, does not appear till the adopting of the amendments. And it then only appears as political means of remonstrating against political grievances, and not as remedy for private rights.

By the case we have last cited, we have shown that petition to the king is not even a remedy at common law for legal rights, and which also furnishes us with a practical illustration of the fact. It is true, the subject may proceed by petition, if he so chooses; but then it is not compulsory, for he can proceed with his *monstrans de droit*, and the king is bound to respond, "let justice be done." He dare not poise himself upon his exalted *sovereignty*, and refuse to give even the meanest subject a hearing. Is it not strange that a republic, claiming to derive its existence from the will of a free people, should be found claiming the right and evincing the will to do that which an absolute monarch dare not attempt; or, indeed, as we have shown, once having made the effort, was forced, by his own tribunal, to render obedience to his own laws?

Let us look a little further into the common law of England, and see if nothing but unbounded *sovereingty* and *obsolutism* in government is to be found in its provisions. If our government is pleased to draw upon the common law to supply itself with sovereign precept, may we not be permitted to appeal to the same source, for the benefit of its remedies, to secure our legal rights? Or will you enforce upon us the former, and deny to us the latter? Can, or will this government adopt only the burdens of the common law, and repudiate its remedies? If we are to be affected by the rule at all, we claim the benefit of the *whole rule*, and *not only the bitter portion of it*. If our government can assume the *prerogatives* of the *monarch*, we insist it shall cherish his *benignities* also. And what are they?

"The principal duty of the king is to govern his people *according* to LAW."

"And this is not only consonant with principles of *nature*, of *liberty*, of *reason*, and of *society*, but has always been esteemed an express part of the common law of England, *even when prerogative was at the highest.*"

"The king," saith Bracton, who wrote under Henry III, "ought not to be subject to man, but to God *and the law;* for the *law* maketh the king."

"Let the king, therefore, *render to the law* what *the law* has *vested* in him with regard to others—*dominion* and *power;* for he *is not truly king* where *will* and *pleasure rules*, and *not the law.*"

And again saith Bracton: "the king also hath a superior—namely, *God*, and the *law* by which *he is made king.*"

"Thus Bracton, and Fortesque also, having first well distinguished

between a *monarchy, absolutely* and *despotically regal* which is introduced by *conquest* and *violence*, and a *political* or *civil* monarchy, which arises from *mutual consent* (of which latter species he asserts the government of England to be,) immediately lays it down as a principle, that—

"The king of England must rule his people *according to the decrees of the laws thereof*, insomuch that he *is bound by an oath*, at his coronation, to the *observance* and *keeping* of *his own laws*." This oath is laid down in the following words, and is administered to each *king* or *queen*, on ascending the throne, by the *archbishop* or bishop:

"*The archbishop or bishop shall say:* Will you *solemnly promise* and swear to govern the people of this kingdom of England, and the dominions thereunto belonging, according to the statutes in Parliament agreed on, and the *laws* and *customs* of the same?

"*The king or queen shall say: I solemnly promise so to do.*

"*Archbishop* or bishop: Will you, to your power, cause *law* and *justice* in mercy to be executed in all your judgments?

"*King or queen: I will, &c.*"—(See Part 2d, 1st vol. Tucker's Blackstone, pages 233–'4–'5.)

But some of the kings who ascended the throne of England found it convenient, when (*like our own government*) they wished to arrogate extraordinary powers to carry out selfish purposes by arbitrary means, to endeavor to construe accordingly their oath of office; as in "the case of the Bankers" and some others, it was determined by the English people to leave the matter in no doubt. And hence, to obviate all difficulties, was enacted the 12th and 13th statutes of William III, the 2d chapter of which reads thus:

"That the laws of England are the birthright of the people thereof, and *all* the *kings* and *queens* who shall ascend the throne of this realm ought to administer the same according to the said laws; and *all* their *officers* and *ministers* ought to serve them respectively according to the same; and, therefore, all the laws and statutes of this realm for securing the establishment of religion, and the *rights* and *liberties* of the people thereof, and *all other laws* and *statutes* of the same now in force, are ratified and confirmed accordingly."

From these principles of the common law, we are advised of a very different theory of government than that of unbounded sovereign discretion and contempt for the private rights of the subjects. We see that it is the *law,* and *not discretion,* that regulates the rights of Englishmen. Have we, as American citizens, less scurity for our rights than they?

We claim that this people were entitled, by birthright, to the common law of England, anterior to the formation of our constitution, and that it was not in the power of that instrument to deprive us of the same; and deny that it has done so, or even attempted it. That the Constitution, as adopted, gave us no new rights, but only guarantied those rights which were before inherent within us. That among these are *legal remedies* for *legal rights.* That our Constitution did not fail to provide for the same, as originally adopted; and the right of petition, as a *remedy* or security for anything was not contained in it, but was only engrafted, for other purposes, after the ratification of the

Constitution by the people, and cannot overreach or supersede a previous right and remedy of a higher and better order. Hence we say, that the right of petition, as provided in the 1st article of the amendment to the Constitution, is only a medium of *political redress* for *public grievances*, and not a *remedy for private legal rights*. Nor can it be made so, except by the grossest perversion of both our Constitution and the common law.

If we are right in the conclusions we have arrived at as to the true interpretation of *petition* as *a redress* or *means of seeking redress* under our Constitution, and are also right in claiming that it was the intention of the framers of that instrument to provide us with any security for our private rights, and there appearing none other than such as we have aimed to point out, we insist that it is the sworn duty of this court to endeavor to extend to us all the protection that the existing laws and the rational intent of our Constitution will afford, in order that our cherished republic may effect the prime object of its creation—that of protecting, absolutely, the rights of our people.

As a legal question this verdict cannot now be disturbed.

We have, in the course of this argument, more than once asserted that there was no principle known to the common law of our land upon which this government can claim, or which this court can apply, to sustain it in any attempt to disturb or review this verdict. This we claim to be true, not only because of the express denial of its right to do so as a "*court of the United States*," in the 7th article of the amendment to the Constitution, but also because of the wholesome, wise, and well-established practice in courts of judicature, both in the United States and England. The sound and venerable principles, upon which the rules of practice we allude to are founded, have been so long endorsed by experience, and are so famliar to this court, that we shall neither state them at large nor adduce authorities to establish their existence. We will, therefore, only state in general terms the substance of these laws, and then endeavor to point out how decidedly the present case calls for the most rigid enforcement of those common law principles.

It is a well-known principle of the laws of evidence and practice, that the same witnesses cannot be twice sworn as to the same matters of fact, between the same parties, in the same trial, unless the verdict, judgment, or decree rendered, has been set aside for cause shown, and a new trial granted. Nor can a new trial at law be obtained upon the mere swearing of witnesses alone, nor even for the purpose of showing that a witness has been perjured; but the party, to obtain such new trial, must come with *written muniments of right*, or sufficient newly discovered evidence, which he could not before discover or adduce after having used due diligence to do so, which he must make clearly to appear; and that must be done within a certain reasonable time, which has long since elapsed in this case.

Were not such the positive rules of law, there never would be an end to any litigated case. A witness, having testified and discovered wherein his statements operated against the interest of his friends, might readily be procured to reswear, with a view to remedy the supposed injury Both the partiality and cupidity of witnesses would be appealed to and

operated upon, to an extent that would destroy all certainty in the standard of evidence. The supply of proof would be measured or controlled by the purses or influence of the parties litigant. *Perjury* and *corruption* of the most alarming character would reign triumphant in our judicial forums, and courts of justice would be but the public marts wherein to hawk off testimony to the highest bidders. The weak and humble would get no verdicts or judgments that would not be readily overcome by a fresh supply of hired proof, or the same witness would be caused to see things he had sworn to in a different light, when his delinquent memory should be refreshed by a suitable reward. To prevent such consequences as these has been the watchful aim of all enlightened governments, and hence the wisdom of the salutary rules which we have before mentioned.

In this case we see, from the proceedings and proofs before us, that a most extraordinary effort was made by the government to sustain its own and invalidate Reeside's claim. It arbitrarily refused to state his account till the latter part of the year 1839, near three years after his contract had expired. It must be supposed, therefore, that it exhausted all the documentary resources in the archives of the department, under which Reeside was acting. Besides, the government had then in its employ, in some capacity or other, all, or nearly all, of the oral testimony that could have any bearing upon the matter, and could therefore consult with its witnesses, from time to time, when in the progress of stating the accounts. After the suit was instituted, in the month of September, 1839, the government took upwards of two years more, as we have shown, before it chose to let its cause come to trial; during all of which time it was further preparing its evidence, both written and oral, to substantiate its claim, so that it had more than ample time to exhaust every source of information.

When the cause came to trial, on the 22d of November, 1841, the government then, as shown by its *subpœnas* issued and the record before you, marshalled no less than *eighty-three witnesses* in the city of Philadelphia, to testify in its behalf. Reeside only summoned two witnesses and took one deposition, (that of the Hon. Col. Richard M. Johnson.) Upon this unequal array of proof, the cause went to a hearing before the jury.

There is another significant fact also to be observed. The government, after having presented its cause till it was satisfied, and Reeside had set up his defence upon his offset pleaded, and having shown most conclusively that there was a large balance in his favor, it (the government) then claimed the *unusual* and *illegal* privilege of bringing forward new and distinct items of charge, not before presented or alleged, which it insisted upon the right to present and prove, or else threatened to shrink from the contest, after discovering that it was so effectually defeated.

The court, though admitting that such was a departure from the established practice, permitted the government to produce and prove its new matter, because of the peculiar and extraordinary state of case that was presented. By this means, as you are told by the testimony of the jurors, the same items were considered and reconsidered, time and again. The jurors tell you, also, that the same witnesses were re-

produced before them from time to time, as it was desirous to sustain a new item of charge, or explain those that were previously submitted; and some of the principal witnesses (Mr. Washington, Mr. Suiter, and Mr. Hobbie) were almost constantly on the stand. The counsel of the government were in daily consultation with these witnesses, and could not be unadvised of all they could say in its behalf, and they were likewise subjected to the most rigid cross-examination by the counsel of Reeside; so that there can be no ground to suppose that all they could state was not fully brought out. The jury had a competent secretary and book-keeper, to state the balances and items in favor of either party, as the same were sustained by the proof, each juror keeping notes of the proceeding, as to commit no mistake. In this way was the investigation kept up for some five weeks, till neither party had anything further to produce, and both recoiled from the magnitude and protractedness of the search. The case then, and not till then, was submitted to the decision of the jury. This jury, after a most protracted labor and minute investigation, returned the verdict you have before you.

In view of these facts, so well substantiated, we feel authorized in asserting, without the fear of contradiction, that it is impossible to conceive of a verdict rendered upon facts so complicated and voluminous, involving matters so difficult to comprehend, in which greater pains could be taken by a jury to master the whole case or arrive at a more just or rational conclusion. Then may we not ask, in the name of all that is fair, rational and just, why their patient, faithful, and protracted labor, and sworn verdict, shall not be respected by their government, which forced them from their daily occupations into its jury-box, to try and decide its cause? Why will it thus insult them by such arbitrary repudiation of that which it compelled them to perform? Does not every consideration of propriety persuade against such an impolitic degrading of the integrity of its own jury? Does not the established law of the land forbid it?

There is one more important consideration presented by the record before us, and which we deem it proper to notice before we dismiss this portion of our remarks, and which bears upon and directly presents to the fullest degree the great importance of the principles of law we are considering, and the mischievous consequences which are justly to be apprehended in the event of any departure from them. It is this: It will be seen, by reference to the charge of the court, (see page 105,) that the government assailed, in the most decided and serious manner, the credibility and integrity of certain of its own witnesses whose testimony did not precisely suit its views. Much might be justly said in condemnation of such an assault from a source so powerful and irresponsible, towards those whom it had been pleased to force into the attitude of witnesses, and then to presumptuously assail their veracity and honor; but we would perhaps, in so doing, be guilty of a departure from the issue before us. But we think we may at least claim, that with a scourging so frightful before their eyes, it would be very difficult to introduce as witnesses, in any further examination of this matter, any one who is now, or has been, in the employment of the government, who would not feel themselves subject to like treatment and

denunciation, in the event their evidence did not suit its views. Who of those that are now employed by the government would not feel that they were swearing at the hazards of both their characters and perhaps the support for themselves and families? Could they, under these circumstances, testify without feeling apprehensive of possible censure at the hands of their *sovereign* employers? The testimony of Mr. Brown would be absolutely indispensable to both parties; he was the chief clerk and confidential agent of the Postmaster General, and was consulted in, and privy to all their moneyed transactions: a fact which is clearly shown by the charge to the jury, now before you, (see page 105 suprà.) Could Mr. Brown's testimony now be obtained, or would he be willing again to appear as a witness? Most certainly not. If he be alive, (which we know not,) and has the spirit of a freeman within him, he would sooner be tied to the whipping-post than be again made the involuntary victim of the abuse and defamation he has received at the hands of an *irresponsible* and *ungenerous* government, which, to maintain an unjust action against a citizen whom it had rendered bankrupt, was willing, and made the attempt, to blight the charactor of its own witness and till then accredited agent, with wholesale charges of fraud which it had not a particle of proof to sustain.

To prevent this sort of mischief, persecution, and oppression, the wholesome rules of law, sanctioned by sound reason and experience, have intervened and said it should not be. Claiming that we have a natural as well as constitutional right to its protection, we avow that the common law of our land demands that this verdict shall stand unimpeached and unimpeachable in favor of Mary Reeside.

Equity likewise forbids that this verdict shall be disturbed.

Did not the established rules of the common law, which we have above stated, *technically* as well as rationally forbid that this verdict should now be interfered with, the sound and benign principles of equity jurisprudence would do so—*because the parties cannot now be made equal, and without equality there can be no justice.*

A moment's reflection must satisfy you of this fact. It is now upwards of fifteen years since this verdict was rendered. The honorable William T. Barry, the Postmaster General under whose administration these matters were transacted, is dead; both the United States judges who tried the cause, and whose information might be necessary, have since died. Reeside has since died; though both he and Judge Baldwin survived amply long for the government to have presented and established its pretended grounds of error, had it ever been able to produce any. How could his widow, who had no personal knowledge of the transactions, be able at this time, or at any time, to meet the official machinery of the Post Office Department in any investigation that could now be instituted? Would she not be entirely at its mercy, and subject to every species of imposition? Certainly she would, and indeed might as well abandon her rights.

Papers, documents, and vouchers are now gone, being either destroyed or mutilated so that their purport could not now be understood. The memory of facts, upon the minds of witnesses, has faded away. The

tread of time has consigned to unavoidable oblivion many important facts, the existence of which would be indispensable to the rights of Mary Reeside, whose mind and body, now dimmed and subdued with the infirmity of age, hovers close upon the verge of the grave. She never knew the facts, and if she had, must now have forgotten them; or, even if it were possible still to know them, where are those who could establish them now as they then were proven? They, too, have gone, or, if not gone, have forgotten.

Besides all this, it cannot be presumed that the Post Office Department could now state these accounts better than it could twenty years ago, when those were living, and in charge of its transactions, who knew most that could or can be known about its engagements with Reeside. The greatest uncertainty would necessarily attend any attempts at restating the accounts now; the truth could not be arrived at, but guess and conjecture would be the nighest approximation to accuracy. Or, if the accounts could now be correctly stated, and the same proofs, to a word and letter, that were before adduced could now again be presented, can it be presumed, or who has a right to say, that this court or another jury (if such were resorted to) would arrive at a different conclusion or result than attended the former investigation? Certainly this court could not devote more time, labor, or attention to the case than that court and jury is shown to have done. Then why should it be supposed that a different verdict or judgment would be resolved upon? Or, if a different conclusion should be arrived at, who has the right or could feel authorized in saying that such would nearer approach the strict standard of right than what may be claimed for the verdict already rendered? We answer, with emphatic confidence, that such assumption would be boldly gratuitous, and cannot be justly maintained.

In the face, then, of all this uncertainty, why should such chance result be hazarded? Does not every equitable and rational consideration forbid it? There could be no *equality*, no *certainty*, and hence *no equity;* but the grossest of injustice would result, which equity forbids. We therefore claim that, for these reasons alone, this verdict should not now be disturbed.

Nor has it been the usage of the government to refuse the payments of the verdicts of its juries in cases like the present.

In this country we have no usages which have grown into positive law, after the manner of the common law customs, which must have existed "time whereof the memory of man runneth not to the contrary." This results, in part, from the fact that our government itself is not old enough to have given rise to any custom that could have existed beyond the memory of living men; but more particularly because our laws, like our Constitution, are written, specific, and defined—it not being deemed best in this country that the laws governing private rights should only be known by tradition.

But we have what are called customs, or usages of trade, which are observed principally among merchants. These usages never create, enlarge, or lessen a right, but sometimes establish a measure of com-

pensation, or the mode of conducting certain transactions among mercantile men. But, even in those cases, they are watched with great jealousy by the judicial eye, and are always checked when they threaten to produce wrong. Hence it was decided, that—

"Usages among merchants should be sparingly adopted as rules of law by courts of justice, as they are often founded on mere mistake, and the want of a comprehensive view of principles." (*Donnell et al.* vs. *The Columbian Ins. Co.*, 2 Sumner's C. C. R. 366.) But usages, even when admitted to this extent, should be free from all doubt as to their *certainty* and *uniformity;* for it has been decided that—

"An usage to control a general principle should be uniform and general; *it is not sufficient that a few instances can be produced.* The usage should be so well established that persons engaging in the trade must be considered as contracting with reference to the usage."—(*Trott et al.* vs. *Wood*, 1 Gallis's C. C. R. 443.)

"What is called the usage or custom of a trade is the law of that trade, and to make *it at all obligatory it must be ancient, so as to make it generally known, certain,* and *reasonable.* An usage, if of *so doubtful* authority as to be known only to *a few,* and where merchants in the trade differ as to its existence, *can never be regarded.*"—(*Callings* vs. *Hope*, 3 Wash. C. C. R. 149.)

Such is the settled law of the land in the application of usages in the course of trade between individuals; and the same principle has been observed in cases where the United States were parties, as for instance—

"An usage which is to govern questions of right between parties *must be so certain, uniform, and notorious,* as to be generally understood by them."—(*United States* vs. *Duvall*, Gilpin, D. C. R. 372.)

"The usage of a department of the government in settling its accounts *can have no effect on those of an individual, unless it is certain, uniform, and notorious.*"—(Suprà, 372.)

But even where there has been an usage established in the government of this *notorious* and *uniform* character, it cannot be enforced when destructive of individual rights. Therefore it was held—

"That the regulations of a department of the government in settling its accounts are intended for general rules in the transaction of its business, *but are subject to revision by a court and jury when they work manifest injustice to individuals.*"—(*United States* vs. *McCall*, Gilpin, D. C. R. 577.)

Now, let us apply these principles to the case of James Reeside. When he set up his defence, plead his offset, and obtained this verdict, in the year 1841, was there any precedents of the government then in existence by which he could be admonished, or know that he had no right to do so? Was there anything on record to advise him that all his labor and pains in producing and proving his demands would be of no use to him; that he must go before the legislative department of the government, and "establish his claim anew?" (to use the language of a certain committee.) We answer, there was not; that there was not at that time a single case wherein the government had so refused the payment of such a verdict. It is true the case of Thomas Fillebrown was then pending; but his case was not

presented upon the grounds of the verdict alone. He was asking for a much larger sum than the verdict in his favor; was asking for a general settlement of his accounts as an employé of the "commissioners of navy hospitals," as the record on file in this court will show. That case, therefore, furnishes no criterion, or, if any, is an authority in favor of the payment of the present, as we see there were several reports made in favor of paying the verdict, and which would have been paid had he not pressed for a much larger amount.

But there was then on record, as we shall proceed to show, precedents of a character acknowledging Reeside's right to take a judgment in his favor upon his just grounds of offset, and showing that the government would respect and pay the same.

The first case we have been able to find is that of a suit brought by the United States against the legal representatives of James Morrison, in the year 1834. The petition we have not been able to find, and the report by the committee does not show what were the facts. But we see that a law was passed authorizing the payment of the balance in the defendant's favor, with interest.—(See 6 vol. Stat. at Large, 560.)

The next case we find, and which is full and complete authority, is the case of the United States *vs.* The Administrator of Balitha Laws, settled also in the year 1834.

In this case the report shows that Laws was a contractor for furnishing brick and doing certain "masonry work at Old Point Comfort and the Rip Raps." The work was completed, but before full payment was made, Laws died.

"That, upon the application of the petitioner, as the administrator of Laws, for the amount due Laws, (say $8,054 40,) the agent of the government refused payment thereof, on the allegation that fraud had been committed by Laws in piling the brick in the kilns, whereby the government had sustained loss to the amount of $11,921 60. To recover the difference between $8,054 40 and the alleged loss of $11,921 60, (say the sum of $3,867 20,) suit was instituted by the government, and after an investigation before a jury, a verdict was rendered against the government for the full amount claimed by the administrator of Laws; that is, for the sum of $8,054 40; and Congress, without pretending any right to readjudicate the verdict of the jury, passed a law ordering the payment of the same.—(*See the Law*, 6 vol. Stat., 588.)

We see, then, there was no usage or precedent of the government anterior to the rendition of this verdict, forbidding Reeside to take such a one, or indicating that it would not be paid, or that the government would assume to reinvestigate the facts upon which it was rendered, outside of its judicial forums. On the contrary, the case of Balitha Laws is precisely in point, being similar in its character to the present; so that if usage or precedent should then have had any effect, or Reeside should be supposed to have acted with reference to anything of the sort, it must be that, seeing a similar case disposed of as above shown, he felt that he had the full right to take such verdict, if the law and facts of his case warranted it, and that it would be promptly paid when so rendered. Such were the inferences, if any, that Reeside

might legitimately draw from the usages or precedents of the government, such as they were at that time.

But we have still another case quite as much in point, which has been disposed of since this verdict was rendered, and which utterly annihilates any pretence that Congress have ever been in the uniform habit of refusing payment of the verdicts of juries upon offsets pleaded by the citizens when sued by the government in its own courts.

We now allude to the case of the United States *vs.* Satterlee Clark, which was disposed of in Congress, June 23, 1848. The report made by the committee in this case is short, and we will state it in full. It is in the following words:

"The memorialist was charged by the government as a defaulter, and dismissed from the service; that afterwards suit was brought against him, in the United States district court for the southern district of New York, to recover the alleged balance of $13,103, and after full investigation of the matters in controversy between him and the accounting officers of the government, the jury, under the direction and ruling of the court, found and certified that there was justly due to the memorialist the sum of fifteen thousand six hundred and thirty-two ($15,632) dollars and sixty-one (61) cents.

"*Without going into a reinvestigation of the matters of fact which were examined and passed upon by the jury, the committee think that the government, as well as the memorialist, ought to be bound by their finding, and report a bill for his relief, and recommend its passage.*"

This report was unanimously concurred in, and a law accordingly passed authorizing the payment of the full amount of the verdict.—(See 9th vol. Stats. at Large, page 784.)

In considering the three cases just cited, especially the last two—that of Law's preceding, and the one of Clark succeeding, the rendition of the verdict in the present—we are advised of something quite different from what would be inferred from the sweeping, and we may add singularly *obscure* and *oppressive*, report made in this case on the 8th of July, 1852. We see that it has not been the custom of "committees in Congress" to report against the payment of verdicts rendered against the government in suits brought by it against the citizens, and are really at a loss to know what "committees" could have been alluded to as having acted as stated in that report. We have searched in vain to find the precedents suggested, but, much to the credit of our government, have not succeeded, and are therefore forced to apprehend that the honorable legislator who made the report in this case either assumed the matter he stated, or acted upon other suggestions than might have occurred, had he truly consulted the records of Congress as his *meagre report* would falsely indicate; for we have here shown that the committee of 1852 *were not authorized by facts* in making the report they did.

But more serious questions than the mere error of fact in a report present themselves to our mind at this point, which are these: How does it happen that our Congress is found adopting one species of report in the cases of Laws and Clark, and an exactly contrary one is offered (*though not adopted*) in the case of Reeside, when the three cases are precisely alike in principle?—or, indeed, if we may not justly say that the

Reeside case presented much higher claims upon the favorable consideration of Congress, as neither of the others were litigated beyond the rendition of the verdict, while this (the Reeside) case was carried to the utter extremity of the law. What inferences as to the security of the rights and the equality of our citizens in the eyes of our government are to be drawn from such *signal partiality?* Are we to learn that Balitha Laws and Satterlee Clark could find remedies for their rights under our system of government, and at the hands of our Congress, which the widow of James Reeside could not? Does our Constitution anywhere even hint towards a sanction for such *odious discrimination?* Does it in any word or sentence suggest, that justice to our people and protection to their rights shall be dealt out by different measures in similar cases? Does it extend the olive branch to some, and hold the rod of oppression over the heads of others? If not, then why is our confidence in the integrity of our government to be shocked by such disreputable practices?

Or shall we press our inquiries further, and ask what outside pressures were brought to bear on or against the one case, which were absent in the others? Shall we ask what was done to make *those* good, or what was omitted which left *this* bad? Did the result depend upon *who asked*, instead of what was asked for? Or what personal motives or resentments were arrayed against *this case* which were dormant as to *the others?* Was it because a high government functionary, and head of a department, felt himself aggrieved, and wished to be relieved from the false position of having sued a citizen for the large balance of $32,709 62, when *a court* and *jury*, upon the face of his own accounts and upon the testimony of his own witnesses, found a balance in favor of that citizen for the much greater amount of $188,496 06; thus showing the enormous error in stating the accounts of his department of $221,205 68? Or was it because a subordinate officer of the same department, who was the chief agent in the prosecution of this suit, and who swore almost by the day as a witness before the jury, (see depositions of Martin and Groves,) did not in *those cases* still further manifest his zeal by writing nearly a hundred and fifty pages of argument before a committee," against *their* payment, as was done in this? Look back to the record—consider the facts as they appear, and see if there is no room for coming to a rational conclusion as to what, if any, unusual causes could have operated against the payment of this case.

Wishing to respect our government, and the integrity of its tribunals and officials, we take no pleasure in pressing these queries; but standing before you as the representative of the widow and orphan children of a deceased fellow-citizen and public servant, who are reduced to destitution by such arbitrary usage as appears to have been practiced upon *him* and *them*, while others, not more meritorious, have met with different treatment and remedies in similar cases for similar rights, we are at a loss to know the reason why it is so, and hence venture to inquire.

We see before us three different verdicts, rendered by three different juries, between different parties, but upon similar state of facts, and involving identical questions of constitutional right and law; and then

see two of those cases paid, and the other rejected, without the assignment of the first grounds of error *in fact* in the latter, after having failed to sustain any *error of law*. When we see this, we are forced to feel that there has been great error of some kind committed, and therefore have felt it our duty to invite your attention to the facts we have stated and the inquiries they suggest. If this widely different treatment, on the part of our government, in the administering of justice to its citizens, has resulted from accident, it is high time a corrective was applied; if it has been the work of design, prompted by any influences or considerations whatever, the injury is then enlarged by the addition of *crime* and *high misdemeanor* in the perpetrators of it, and therefore demands the prompter and more ample remedy.

Equal rights are the birthright of our people, and equal laws and prompt justice is the theory of our government. Such are the germinating seeds from which it sprang; and the confidence of our people is the genial soil in which those seeds are planted, and from whence, warmed by the sunlight of true patriotism, has grown up and been developed to present maturity the majesty and power of our republican institutions. Discriminating partiality and favoritism, the rewards of servility, may well become despotisms and monarchies, but are as obnoxious to freedom as a breath from the shade of the *Upas* is to animal existence, and as certain to prove fatal in the end. To prevent the existence of such, is the solemn duty of both the legislators and tribunals of our land; and hence, to correct and remedy where such shall have improperly obtained, is equally demanded by justice. The present is a case calling loudly for this remedial power—a case established by the most rigid ordeal known to our laws, embracing a right affirmed by the highest tribunal of our land, and can receive no better sanction, even if it be possible to clothe it with *one more technical.*

We therefore submit to you the *verdict of a jury—the solemn award of twelve of your sworn peers*—a verdict rendered upon issues of facts submitted to their decision, by the government itself, in a suit it was pleased to prosecute most unjustly against James Reeside, who was forced to defend or stand forever precluded from obtaining his rights. The record shows you the burden of their task, and the jurors tell you the labor they performed to arrive at a just conclusion. You are shown, also, by the record, that the government exhausted every *legal* mode of attack to annul their verdict as rendered. It has withstood the whole, and stands fortified by every consideration of reason and justice known to enlightened laws. Can this tribunal, setting as a "court of these United States," acting in obedience to an oath to support a Constitution pledged to "establish justice" for this people, venture to say this verdict shall be annulled? if you can, then with all due respect we must say, that we can conceive of no possible state of case which you may not with greater propriety reject. But believing, in view of all the auspices and sanctions with which this case is surrounded, that you will not so decide, we shall look for no other than an award at your hands, saying that this verdict shall stand *unimpeached* and *irreversible* in favor of the widow and orphan children of James Reeside.

Interest.

Assuming there can be no doubt but that this court will fully sustain this verdict, we claim that *interest* must also be allowed from *the date of its rendition.*

This we claim, not only because of the fact, that, according to the settled laws of all civilized governments, the *judgments* and *decrees of their judiciary* always bear interest from the period of the announcement of such judgments or decrees—even though the debt or demand upon which the same might have been rendered did not, of itself, bear interest previous thereto—but also because of other special and distinct reasons, which we shall presently state.

The position assumed by our government on the subject of the payment of interest to its own citizens upon just demands, when compared with the theory and spirit of our institutions, is quite anomalous, and the practice it sometimes enforces lack much of being reconcilable to any known principles of justice. The difference it creates between ITS *mine* and OUR *thine*, is truly a novelty in legal morals, and, we will venture to say, is known to no other region than our republican soil. In all other countries claiming to be civilized, whatever rate of interest their government charges or exacts of its people, when delinquent in the payment of their dues *to the government*, the government, when in default, allows a like rate of interest *to the people.*

Nor is there anything to wonder at, or to commend, or even meritorious in such a rule or practice, for it is nothing more than even-handed, common-sense justice from the government to its own people, dictated by the eternal rules of right, which it would be oppressive and wrong to deny; a *wrong*, however, which is practiced without apology by this great republic.

Why our government can presume to charge interest upon its open accounts against our citizens, which may be standing undemanded, or without their knowledge, on its auditors' books, when at the same time it refuses interest to our citizens upon similar demands, in fact, but which have been liquidated and ascertained, and constantly demanded, and begged for by memorial, year after year, without payment or adjustment—presents a question of national integrity admitting of no answer creditable to the honor of our institutions.

The *pretence of a presumption* that our government is to be supposed always ready to pay its just debts is a miserable fallacy, quite as destitute of truth as it is devoid of justice. To warrant such a presumption, it ought to appear that such is and has been the actual practice of the government—a fact which, if true, will appear from its archives. Now, what do we find there? Do we find our government so prompt in the settling of the demands against it as to entitle itself to this flatteringly arrogated, but actually false presumption? Not at all; on the contrary, we see that the plainest claims, thoroughly vouched in point of proof, stand upon its calendar for years, till the claimant has spent more in the pursuit of the claim than it is worth, and then is paid a fraction of the principal, without interest, and required to sign a *receipt in full* against the part withheld, before he can even get this naked fraction; which sum, the party feeling abject and destitute,

down-trodden and disheartened, receives, not as the sum that is justly due him in the pride of his rights, but as *a miserable pittance of his rights*, requisite to preserve the remainder of his existence from greater want, after the government has starved him sufficiently well to make him appreciate the mite granted. And then, giving him a kick from its door, bids him go forth and tell the people that it (the government) is always ready to pay its just debts.

The practice of the government in making a citizen sign a receipt in full for all demands, when at the same time it knows it only means to pay, and only is paying, him part of that demand, the whole of which is due as fully as the part paid, is an infamous outrage upon the rights of the citizen, and just about as liberal and just as it is in the highway robber, who holds his dagger hard against the heart of the powerless traveller, requiring him to surrender the last farthing, in order to preserve his life.

This habit, so shamefully persevered in, is not only disgraceful within itself, and unworthy the head of a great nation, and directly in conflict with the principles of a free government, but is emphatically denounced by the spirit of our Declaration of Independence, and is an exact parallel to one of the causes assigned as the grounds of our revolt against George the Third: "He has refused to pass other laws for the accommodation of large districts of people, *unless those people would relinquish the right of representation in the legislature*—a right *inestimable to them*, and *formidable to tyrants only.*"—(See Declaration of Independence.)

Suppose they could then have said of King George, as might now be said of our own government, that—

He has refused to surrender to us our honest dues, unless we would relinquish part of the same, or other demands equally just.

Why would not such a statement as this, if true, have weighed heavily among the grounds alleged as the cause of our Declaration of Independence? Would it not have been seized upon as one among the greatest of grievances? And why will our government perpetrate upon our people now that which our fathers fought to rid us of then? There is certainly but very little consistency between the then *precept* and present *practice*.

But we do not propose to pursue this branch of inquiry, which is not directly material, and have only alluded to it because of the frequent appearance of such an arbitrary clause attached to the reports made and the laws passed, in the many cases we have examined, to feel ourself authorized in saying, as we do, that it is utterly false in fact to pretend that this government has any shadow of right to claim the presumption of being ever ready to pay its just debts. Such, certainly, ought to be the fact, substantiated by practice; but precedent proves so clearly to the contrary that such pretence is reduced to *a mere naked assumption*, destitute of fact to support it.

We will venture to put forth against any such *assumed presumption* (that the government is ever ready to pay its just debts) *a presumption* of a very different order, and one which we think is much better sustained by manifest fact, which is this:

Must not the government be presumed to know its indebtedness?

Do not the people support some two regiments of officials and clerks, ranging from the heads of bureaus down to the lowest accountant, whose special duty it is to keep the government advised as well of its obligations and indebtedness as its dues and demands? If those officials discharge their duty, is it not conclusive that the government *does know its indebtedness?*

And another proposition we will here submit:

If the government should be presumed to know its indebtedness, is it not unjust in it not to advise those to whom it is indebted, in order that they may come forward and receive the amount due them? Is it not derogatory to every sense of honor that it should fail to do so? Has the government any shadow of right to keep one cent of money that its books show to be due to its citizens? If the books are properly kept, the government cannot be ignorant of the fact; and if it is not ignorant of the fact of its indebtedness, and does not pay, is it not absurd to assume for it that it is always ready to pay?

One thing, we perceive, is quite certain: The government is very apt to find out who owes it, both as to principal and interest; and we cannot see why the same vigilance and accounting capacity that discovers *the dues from* should not also discover *the indebtedness to* the citizen. And we can just as little see why the same sense of duty and honest dealing that prompts the government to demand *its dues* from the citizen should not require it to pay over what is due to him. These are practical questions and facts, sustained by reasons which should give them much force, and should at least have the effect of silencing the empty avowal that the government is always ready to pay; and especially when applied to a case like the present, which is a verdict of a jury rendered upon facts submitted and issues made, and decided before a government tribunal, and having been fiercely assailed by the common law mode of testing the same, has stood for fifteen years unimpeached.

Assuming, then, that we have shown sufficient both of *principle* and *fact* to relieve the present case from any prejudice in the allowance of interest, on the false presumption of the government having been ever ready to pay the original demand, we shall now proceed to show that this is a case which demands the payment of interest, both on the principles of *international* and *municipal law*, and also by the *precedents* and *usages* of the government in similar matters.

As a basis of argument in this behalf, in preference to anything we could suggest, we will quote some extracts and authorities from the able argument of Mr. Webster, in "the case of the Union Land Company," submitted on the subject of *interest*, "before the Commissioners on Claims against Mexico."

As to the right to interest, Mr. Webster said:

"An individual has suffered a wrong, a loss and injury inflicted on his property, for which the government is liable, and for which it feels bound to provide him redress. But that redress cannot in many cases be instantaneous or immediate. Before it can possibly be obtained in the appropriate course, much time is consumed and much personal attention demanded, and often heavy expenses incurred. These are all direct and immediate consequences of the original loss or injury;

they form a part of it, and in all justice and equity enhance the just claim for indemnity."

If Mr. Webster was correct in assuming that a right in the citizen, arising under a treaty, although delayed or withheld, should be secured to him by the government, though it did not use or derive any benefit from the right so delayed, and that the government should nevertheless pay *interest* or *damage* for such detention, with how much greater force must not the principle apply in a case like the present, where the government has used, and enjoyed, and derived as much benefit from the right or demand withheld, as any other like sum used in its financial operations for an equal length of time? Certainly, if the reasoning was at all tenable in the case to which it was specifically applied, it must be conclusive in this.

Mr. Webster then speaks of the different modes in which the indemnity in such cases are allowed by different tribunals, in the following words:

"Different tribunals deal with these portions of the loss and injury in different ways, all of them being reasonable in themselves."

"One thinks it just to make specific allowances for the loss of use of capital, and for time, expenses, and charges.

"Another, as a simpler mode, makes one allowance to cover them, all under the name of interest, and adds this to the original amount of loss, as proof.

"A third combines all parts of the compensation together, forms one aggregate, and awards a round sum or sum in gross for the whole.

"It is in the discretion of any tribunal, called on to make satisfaction for a loss or an injury, to adopt either of these modes."

In support of the above premises as a principle of international law, the following, quoted from Rutherford, is cited as authority:

"In estimating the damages which any one has sustained, when such things as he has a perfect right to are unjustly taken from him, or withholden or intercepted, we are to consider not only the value of the thing, *but the value likewise of the fruits or profits which might have arisen.*

"He who is the owner of a thing, is likewise the owner of such *fruits* or *profits;* so that it is properly a damage to be deprived of them, as it is to be deprived of the thing itself."—(See Rutherford, Lib. 1, ch. 17, sec. 5. Also, Campbell's Grotius, vol. 2, pp. 195, 196, Lib. 2, ch. 17, sec. 4.)

It will be noticed, that the learned authors cited draw their illustrations as to what is right and proper to be observed between nations, from the same principles of law that are recognized and enforced as just in the municipal laws governing the rights between man and man; arguing, very properly, that *right* and *justice is one eternal principle*, binding alike upon either *nations* or *individuals*, and should *be respected* and *enforced by all.*

Wheaton specifically applies this rule of law to nations:

"If a nation has taken possession of what belongs to another, if it refuses to pay a debt, or repair an injury, or to give adequate satisfaction for it, the latter may seize something of the former and apply it to its own advantage, till it obtains payment of what is due, together

WITH INTEREST AND DAMAGE."—(Wheaton on International Law, p. 341.)

Precisely the same doctrine is maintained by Vattel.—(See Lib. 2, ch. 18, sec. 341.)

No nation of modern times has more earnestly insisted upon the above principles, in their international relations, than the United States. Hence we see, among other instances, that in the joint commission which assembled at Washington to carry into effect the award made by the Emperor of Russia, sitting as arbitrator between the United States and Great Britain, composed of Langdon Cheves as the American, and George Jackson as the British commissioner, that our representative took decided ground on this subject, and claimed (see his first communication, February 25, 1825) and laid down the rule of indemnification or satisfaction for injuries suffered, thus:

"The property of which he (the claimant) claims the equivalent belonged to him. It has been decided that it ought not to have been taken from him. It has been proved that it was taken from him, as far back as the 17th February, 1815, and it has been agreed that he is to be compensated for the injury sustained."

May we not here be permitted to claim, that the amount now demanded belonged to James Reeside? That it has been decided by the most solemn inquest known to our law, that it belonged to him previous to the year 1836? That it has been proven, by the *verdict of a jury and the judgment of a court*, to have been due to him on the 6th of December, 1841? And will not our government consent, and admit that his widow and children shall be compensated for it now, upon the same principle and to an equal extent that it claimed for our citizens against Great Britain, in the year 1825?

Mr. Cheves then lays down the grounds upon which the measure of indemnity should be predicated, thus:

"The injury is the cause and measure of the compensation. The only inquiry then is, the extent of that injury. *The extent of the injury is equivalent to the pecuniary value of the property at the time he was deprived of it*, and *the value of the sum of money of which he was deprived during the period of its detention.*"

"Indemnification means a reimbursement of a loss sustained. If the property taken away on the 17th of February, 1815, were returned now uninjured, it would not reimburse the loss sustained by the taking away and the consequent detention—*it would not be an indemnification.* The claimant would still be unindemnified for the loss of the use of his property for ten years, which, *considered as money, is nearly equivalent to the original value of the principal thing.* So, in substituting a pecuniary value for the thing, *unless interest is allowed for the use of the money*, the claimant *will remain unindemnified.*

Is not the whole of this principle strictly applicable to the case of Mary Reeside? Has not the amount stated in the verdict of the jury been due her since the 6th of December, 1841; and would that even sum now reimburse her for its detention since that time? Would she not still be unindemnified for the loss of the use of it? And, though the interest may have now nearly equalled the original amount of the verdict, is her claim to it any less valid than was the claim of our citizens against the British government, which our government so

fully recognized, and felt compelled to insist upon its payment? Or can she *now*, any more than our citizens *then*, be indemnified, "*unless interest is allowed*" her for the use of her money? We submit to all that is candid and just, whether she is not entitled to the full benefit of this principle.

Our commissioner, Mr. Cheves, then draws his illustrations of the principles which should govern the two great nations, from the laws which govern individuals. Thus:

"He who deprives another of the use of his property does him *as great an injustice in principle*, if not *in degree*, as he who deprives him *finally* and *forever of it*. And *justice equally requires* that he should indemnify him for the loss of *its use*, as for the loss of the principal thing. Unless it can be truly averred that one may deprive another of the *use* of his property for a given time, and, if he finally return it uninjured in its identity, not to be bound in justice to compensate him for the loss of its use, it is conceived *it cannot be truly asserted that interest does not follow the principal.*"

Again: "If interest be an incident usually attendant on the delay of payment of debts, damages are equally an incident attendant on the withholding of an article of property; and when they are rendered in the shape of damages, they are usually given with liberal, and sometimes an unsparing hand. It is then a *mitigation* of the usual incident of damages for the detention of property, to establish a fixed and equitable rate of interest as the equivalent."

In support of these views, Mr. Cheves insisted that "the common law and civil law are both clear in allowing reparation for the loss of the use of the thing withheld, *from the commencement of the tortious detention*," and insisted that "the rule of the public law is the same."

Thus, we see that our government, while exacting indemnity of sister nations for injury done by their citizens to our own, shows great aptness in appreciating and enforcing the true and rational rule of indemnity, although that nation of whom it was so required had derived no benefit or profit from the use of the property alleged to have been taken from our people, but, on the contrary, expressly denied its approbation to the act done by its people which gave rise to the complaint. Why should a wrong or injury inflicted upon our citizens by our own government be deemed less deserving of the same and equally full measure of indemnity, as if the same or a similar wrong or injury had been perpetrated by another nation? Is there anything in the source from whence a wrong may emanate that would render it the more or less tolerable, or easier to be endured, and deserving of remedy or recompense less decided or ample? In the outskirts of what principles do such narrow ideas of national duty to our own people originate? Or does our government act in such cases upon the inquiry of who did the injury, instead of what was the injury done, and what the measure of recompense due?

The same principle contended for by Mr. Cheves has been uniformly held as the established doctrine of this country by the Supreme Court of the United States. Thus:

"The prime cost or value of the property lost, and in cases of injury the diminution in value by reason of the injury, WITH INTEREST

THEREON, affords the true rule for estimating damages in such cases."—(5 Wheaton, 385; L'Amistad des Rues.)

See also Mr. Justice Story, (1 Gallison, 315;) and see to the same points the case of Lively, (3 Wheaton, 546.)

The rule is exactly the same in English courts sitting under the law of nations.—(2 Dodsen, page 84.)

We have thus far shown, by the clearest authority of the highest order, that *interest* or *damages* (and the former is but another name for the latter) for the detention of the demand—that injury to property, public or private, and the failure or refusal to make prompt indemnity—has been and is claimed to be but a proper, just, and legal consequence of such injury, failure, or refusal to pay, and it is so held and declared by the laws of nations. And, furthermore, that no nation has gone further than these United States in the way of asserting and enforcing this rule of international law, or in resenting the slightest infraction of it by other nations to the prejudice of the rights of American citizens.

Though they are, strictly speaking, authorities governing the conduct of nations in their intercourse with each other; still we insist they are none the less proper rules for maintaining individual rights; because, as before stated, we allege the eternal principles of *right* and *wrong* are universal and the same, whether applied *to nations or to individuals*, and should be dealt out and administered accordingly; and that, therefore, whatever system of laws is deemed proper to be established as the rule of justice in the action of governments, should be applied with increased strictness in protecting and fostering the private rights of their citizens. Hence we claim that all just intendments deducible from the authorities we have cited should be observed in the present case, and which, if allowed us, settles the question at once in our favor.

The common law rule in the allowance of interest as between man and man, and the extent to which we are entitled to the benefit of the same having been settled by this court in an able and elaborate opinion heretofore rendered, we shall not presume to urge any thing in exception to it, however reluctantly we may, as a matter of principle, concede to the government the privilege to enforce one rule when in its favor, and observe another when against it, in disposing of similar questions of right with its people. Or, what is still more objectionable, to avail itself of the *people's* laws when favorable to *its* demands, but repudiating the same when they operate the other way. We shall, therefore, do no more than point out the common law rules on the subject of interest to such an extent, and in such connexion, as where the government has been a party, or has in her judicial, legislative, or ministerial capacity recognized the same.

And first we say, that in all adjudicated cases where the government has been a party, the United States courts have allowed interest on the same principles, and to the same extent they would have done on similar demands of liquidated offsets pleaded in suits between man and man—and have allowed to or charged the government with interest upon principles which are identically the same.

As an illustration of the first stated rule of action, we will invite

attention to the case of the *United States* vs. *Gurney*, (4 Cranch's R. 345.) In this case the government had a right to have insisted upon certain damages upon the bond which formed the subject of dispute, but had waived the damages and claimed interest. The defendant insisted that the waiver of damages carried with it a waiver of interest also.

Chief Justice Marshall, in delivering the opinion of the court, said:

"The majority of the court is not satisfied, that in waiving these damages the obligee has without any agreement on the subject relinquished *that right to interest which is attached to all contracts for the payment of money.*" And the court rendered judgment for the sum, with interest from the time when it should have been paid.

As an instance, where the same rule has been enforced against the government, we will invite attention to the case of "*Thorndike in error* vs. *The United States*, (2 Mason's C. C. R., p. 18.)

This case was, in some of its features, as to the allowance of interest, similar to the present—so far as a similarity may exist between Post Office drafts and Treasury notes. The Treasury notes were pleaded as an offset to a suit brought by the United States, and interest claimed upon them after the time they ceased to bear interest on their face.

The counsel for Thorndike relied upon and urged, among other principles, the practice of the government to charge interest in such cases, as sustained by the principles of common law.

The United States attorney resisted the allowance of interest, upon the ground of *sovereignty*, or *the unsuability of the government*, and many other technical grounds.

Justice Story, delivering the opinion of the court, said:

"If the present, then, were a contract between private citizens, there can be no doubt that the court would be bound to give interest upon the contract up to the time of payment. And if by law the amount due on the contract could be pleaded as a tender or a set-off to a private debt, it would be a good bar, to the full extent of the principal and interest due at the time of such tender or set-off; nay, more—if the note or promise were given by the citizen to the government, the latter might enforce its claim to the like extent. Can it make any difference, in the construction of the contract, that the government is the debtor instead of the creditor? In reason, in justice, in equity, it ought to make none; and there is not a scintilla of law to justify any. And if a suit could be maintained against the government, I do not perceive why it would not be as much the duty of the court to render judgment on such suit for the principal and interest, in the same manner and to the same extent as it would in the case of private citizens. The *United States* have no prerogative to claim one law upon their own contracts as creditors, and another as debtors. If as creditors they are entitled to interest, as debtors they ought to pay it.

"It has been asked whether, upon all contracts of the government which are not strictly performed according to their terms, interest is to be allowed in the same manner as upon private contracts? In point of justice or law, no reason is perceived by the court why the

government, if it were suable, ought not to pay what, as creditor, it could compel its own debtor to pay.

"*If a different measure of compensation could be dealt out by judicial tribunals, in my judgment it would seem as little to comport with the dignity of the government as it does with sound policy and* THE ETERNAL DICTATES OF JUSTICE."

We will not weaken the force of the sound principles laid down by Justice Story in the opinion just cited, by offering any comments of our own. They embrace and set forth the true theory and intendments of the American Constitution, and are perfectly unanswerable. They may be obscured or withheld by sophistries and fallacies, but can never be overcome by sound reason or justice. They fully apply to the present case, and demand that interest shall be allowed.

But the claim for interest in this case is sustained by other principles, not only sanctioned by the courts, but endorsed by the legislative and ministerial departments of the government.

Of this class of authority we have a great variety of precedents, all founded upon two specific but associated principles of *law* and *right:*

1st. That in cases like the present the balance, whether in favor of the government or citizen, should bear interest from the time it was ascertained to have been due and ought to have been paid.

2d. That the drafts issued by the Post Office Department, and negotiated for its use, bore interest, by both law and usage, from the moment they were due and should have been paid. And associated with this principle is the further one, that all money advanced or paid for the use and benefit of the government always bore interest.

In support of the *first* position just assumed, we invite attention to and cite as precedent the case of Stockton & Stokes, which was adjudicated and settled at the 1st session of 25th Congress, 1837.

The case of Stockton & Stokes warrants and requires the payment of interest in the present case in every possible feature, even anterior to the rendition of the verdict: because the former was entirely for money retained by Mr. Kendall as Postmaster General, which was due the contractors for service performed, and withheld as a drawback in favor of the government for allowances made by Mr. Barry to compensate for *extra service*—which allowances Mr. K. undertook to reverse and hold back, as stated; while the present case is nearly the whole of it for money provided and advanced for the use of the department, by Reeside's endorsing and negotiating its drafts.

The case of Stockton & Stokes was referred by Congress to Virgil Maxcy, the then Solicitor of the Treasury; who, after a protracted labor, made a full report, allowing every item of their claim, with interest. The full report of the proceedings and items allowed will be found in Document No. 52, 25th Congress, suprà.

On the subject of interest Mr. Maxcy uses the following language, and adopts the following principles as to the law and justice of the case:

"The contractors have presented for allowance a claim of interest upon such sums as, being due to them, have been retained by the authority of the Postmaster General.

"It is true, as a general rule, that the United States do not pay in-

terest upon sums due to individuals, though in many cases they demand it of them. This rule is not based upon any idea of there being one rule of justice for the government and another for the citizen. It is founded on the idea that the government is always ready to pay its debts; and if those having claims against it do not present them duly authenticated for payment, it is owing to their own negligence that they do not receive their money. They are, therefore, not allowed interest. But, where the government *has detained money, and refused to pay it, justice requires, upon its being ascertained afterwards it was justly due, that the government should do to its creditors what it, when creditor, requires of its debtors.*"

In obedience to these just and rational views, the Solicitor, after ascertaining the proper time when the money ought to have been paid by the government, allowed interest in favor of the contractors for that period, and the Supreme Court sustained the award.—(See 12 Peters, 613.)

The same principle as stated by the Solicitor of the Treasury in the case of Stockton & Stokes was recognized as the law, and so stated by Judge Baldwin in his charge to the jury in the present case:

"You may find interest on a balance either way, from the time it ought to have been paid."—(*See the charge*, p. 147.)

And the judge again reiterated and stated it as the law, in his opinion, when overruling the motion of the government for a new trial:

"On the subject of interest, the jury were instructed that they might allow it from the time when the balance ought to have been paid."—(*See the opinion*, p. 157.)

In support of our *second* proposition, we cite the case of Converse & Reese, finally acted upon in Congress, February 9th, 1842, after having been reported upon favorably at each Congress from 1837, but not disposed of till the time above stated.

This was an application for the payment of Post Office drafts, with interest from the time they should have been paid. The drafts are stated in the following words and figures:

"$3,000. WASHINGTON, *March* 14, 1835.

"RICHARD C. MASON, Esq.,
"*Treasurer Post Office Department:*

"One hundred and twenty days after date, pay to our order three thousand dollars, and charge to our account, for transporting the mails from Lower Sandusky, Ohio, to Detroit, Michigan Territory.

"CONVERSE & REESE.

"Accepted.

"R. C. MASON, *Treasurer.*"

This was the ordinary form in which all those drafts were issued about that time.

The committee reported in favor of paying the draft, and stated:

"The committee *think interest should be allowed on these drafts.* There is no question, the amount they contained was due for services

actually performed, and not for extra allowance, nor for anything of that character; *and if the department had been in funds when they were accepted, or at the time they came to maturity*, they would have been paid."

The language of this report is somewhat explanatory of the financial condition and tribulations of the Post Office Department during the time of Reeside's connexion with it, and which had not ceased as late as the year 1837. And it also confirms the extent to which the department was driven to possess itself of necessary means, when both the committee and the Postmaster General admitted that this and other drafts were protested, although known to be justly due. Thus:

"The department withheld payments due on this and other routes to Converse & Reese, to reimburse the money on the first draft, and to indemnify itself for its liability on the second draft by having accepted it. *This was done as a matter of finance, and not because there was any doubt about the claim.* This the Postmaster General expressly stated to the petitioners in his letter to them, under date of May 14, 1835."—(See Report, No. 47, 27th Congress.)

In pursuance of this report, the following law was passed:

"*Be it enacted, &c.*, That the Postmaster General issue his warrant on the Treasury of the United States, registered and countersigned as provided by law, for the payment of John P. Converse and Henry J. Reese, out of the moneys paid into the treasury for the service of the Post Office Department, for the sum of six hundred and thirteen dollars and eighty-three cents, *the interest on two drafts*, (including the expense of protest of one dollar and seventy-five cents,) under date of March fourteenth, eighteen hundred and thirty-five, and accepted by the then treasurer of the Post Office Department, by direction of the Postmaster General, at sixty and one hundred and twenty days; which drafts were negotiated at the Metropolis Bank, and not accounted for by the said department."—(See vol. 6 Stat., p. 848.)

It will be observed that this statute provides for the payment of *interest alone;* the principal must have been provided for in some other way. It, however, is a decided authority in support of our position.

But we also have precedents, founded upon some of the very drafts which were issued in favor of Reeside, which though they do not go further in support of the principle we contend for than the cases last cited, are something more specific.

The first of these we shall allude to is an act passed for the benefit of Howland & Aspinwall, as follows: (See 9th vol. Statutes, page 153, sec. 4th.)

"*And be it further enacted*, That the Secretary be, and he is hereby, authorized and directed to pay to Howland & Aspinwall, of the city of New York, the sum of five thousand dollars, *with interest*, from the first day of November, eighteen hundred and thirty-five, out of any money in the treasury not otherwise appropriated, being the amount of a draft drawn by James Reeside on the Post Office Department, dated the eighteenth day of April, eighteen hundred and thirty-five, payable on the first day of November, to the order of said Reeside, and accepted by the treasurer of the Post Office Department, and by

the said Reeside endorsed to the order of H. H. Williams, of Baltimore, and by the said Williams endorsed in blank, and which draft is the property of said Howland & Aspinwall.

A similar act for the relief of Abraham Horbach, founded upon another one of the same drafts: (See 9th vol. Stat., page 677.)

"*Be it enacted, &c.*, That the Secretary of the Treasury be, and he is hereby, authorized and directed to pay to Abraham Horbach the sum of five thousand dollars, *with lawful interest*, from the first day of January, eighteen hundred and thirty-six, out of any money in the treasury not otherwise appropriated, being the amount of a draft drawn by James Reeside on the Post Office Department; which said draft was endorsed by said Abraham Horbach, at the instance of said James Reeside, and the amount drawn from the Bank of Philadelphia, and at maturity said draft was protested for non-payment; and said Horbach became liable to pay, in consequence of his endorsement, and did pay the full amount of said draft."

The case of Converse & Reese fully establishes the principle, that interest is proper and legally chargeable on all Post Office drafts; and the two cases of Howland & Aspinwall and Abraham Horbach fully sustain this principle, and apply specifically to the Reeside drafts, relying upon which we might here safely rest this part of our argument. But we have just at this stage of our investigation met with another precedent and authority founded upon the Reeside drafts, which we think is decisive of the present case in all its features. It is the case of the United States *vs.* the Bank of Metropolis, decided by the Supreme Court of the United States at the January term, 1841. (See 15 Peters, page 377.)

The principles settled in the case of the Bank of Metropolis are applicable to the present in all its essential particulars. It was a suit brought by the government in the United States circuit court for the District of Columbia, to recover a sum of money deposited by the Post Office Department for its own use.

The bank pleaded as a credit and offset certain drafts drawn by certain contractors, (among whom was James Reeside,) and accepted by the department through its properly authorized agent, which had been protested and not paid at maturity, and also claimed interest on said drafts from the time they fell due. This credit and offset, if allowed, would leave a balance in favor of the defendant, for which a judgment was asked.

Upon the pleadings of the parties, the case was submitted to a jury upon certain instructions respectively asked, and allowed or rejected.

The jury, under the instructions of the circuit court, found and rendered a verdict in favor of the defendant, both for the principal sum and *interest* on the offset pleaded. The sum claimed by the government was $27,850 50. The defendants claimed credit for $23,000, which, with *interest*, would amount to upwards of $30,000; which being allowed as stated, the jury found a verdict in favor of the defendants for $3,370 94.

The United States appealed on error assigned to the Supreme Court, when the verdict and judgment was affirmed upon all the points submitted in an elaborate and able opinion, to which we invite the particular attention of the court.

After the affirmance of the judgment in favor of the defendant, application was made to Congress for an appropriation to pay the amount, which was granted by an act passed and approved March 2, 1847, thus: (See 9th vol. Stat., p. 489.)

"*Be it enacted, &c.,* That the Secretary of the Treasury be, and he is hereby, authorized and directed to pay to the Bank of Metropolis the sum of three thousand three hundred and seventy-one dollars and ninety-four cents, WITH INTEREST THEREON, from the *sixth day of March, one thousand eight hundred and thirty-eight,* which sum," &c., proceeding to give a clear recital of the suit and the offset pleaded and judgment for the defendant, which was affirmed as before stated.

The case just cited, and subsequent proceedings thereon, establishes for the present the following several points:

1st. It was a suit by the government against a private corporation; and that, upon offset pleaded, a verdict and judgment was rendered in favor of the defendant.

2d. That upon appeal, the Supreme Court affirmed the judgment so rendered, thus recognizing the right of the defendant to plead a legitimate offset, and take a verdict, without any *special leave* or *consent* of the sovereign government expressly given to that effect.

3d. That the Supreme Court recognized the legality of interest on the offset so pleaded, and also upon post office drafts and acceptances.

4th. That Congress recognized the validity of the verdict and finding of the jury; and did not feel it their duty, or that they had the right to re-examine the same, or require the claimants to "*establish their claim anew.*"

5th. That Congress paid interest on the balance stated in the verdict, according to the finding of the jury.

We contend that the principles set forth in each of these propositions are strictly applicable to the present case; and that every intendment, legal or equitable, that was announced by the Supreme Court, and observed by Congress in behalf of the Bank of Metropolis, should be extended to Mary Reeside in whatever award this court shall make; the cases are quite analogous, and ought to be dealt with accordingly.

But Congress have usually paid interest on all liquidated demands pleaded as offsets and credits to suits brought by the United States against its citizens. In support of this point we invite attention to the case of the United States *vs.* James Morrison's representative, and the act passed in that behalf, thus:

"*Be it enacted, &c.,* That the Secretary of the Treasury be, and he is hereby, authorized to settle a suit in favor of the United States against the legal representative of James Morrison, deceased, and the claim against the United States in favor of said representative, *for interest on a liquidated demand,*" &c.—(See 6 vol. Stat., p. 560.)

A similar act was passed for the relief of the executors of Charles Wilkins.—(*Ibid,* 626.)

The government has also paid judgments, and interest thereon, when recovered against its officers for injuries done to private property when in the discharge of their official duty; as per example, the case of Major A. A. Massias, and the act passed for his relief:

"*Be it enacted, &c.,* That the proper accounting officer of the

Treasury Department settle and pay to Abraham A. Massias the amount of *a judgment, with interest*, which Thomas Barkhouse lately recovered against the securities of the said Abraham A. Massias," &c., " and all such fees as may have been paid by said Massias in defending the cases of," &c.—(See 6 vol. Stat., 545.)

Congress has also paid interest on awards rendered by arbitrators upon matters of controversy between the government and citizens. The act passed as early as the 14th Congress, for the relief of Joseph Wheaton, is of this character:

"*Be it enacted, &c.*, That the proper accounting officers of the Treasury Department be, and they are hereby, authorized and directed to pay to Joseph Wheaton the sum of eight hundred and thirty-six dollars and forty-two cents, *on account of interest due him* from the United States upon sixteen hundred dollars and eighty-four cents, from the first of April, one thousand eight hundred and seven, to the twenty-first of December, one thousand eight hundred and fifteen, *pursuant to the award* of *George Young* and *Elias B. Caldwell*, in a controversy between the United States and the said Joseph Wheaton."—(6 Stat., 166.)

It would seem that the *sovereignty* of our government had not grown so big then as to become irresponsible, nor had it raised its imperial head so high above the people as to lose sight of their rights—that it could then respect the decision of *two sworn* arbitrators, much more the honest verdict of *twelve jurors*.

The minority report of the committee in Congress to investigate the payment of interest on, and the connexion of certain parties with, the Galpin case—which so recently convulsed the political elements of the day, under the pressure of party tactics—and in which report every inch of ground which could with the least plausibility be assumed against the payment of interest by the government in any case was eagerly pressed—still that report, made as it was, is a direct authority for and fully admits the principle, that interest should be paid in all cases like the present.—(See the Report, No. 334, 1st session 31st Congress.)

This report—after having reduced by the force of political logic, to a mere skeleton, every principle of justice and honest dealing on the part of the government with its citizens, and totally annihilating the rules of right as between man and man—finally lays down the following as good, sound, sovereign and republican political justice, in the payment of interest by the government:

" The general rule is clear. That there are exceptions is a matter of course. These are—

1st. " When interest is directed to be paid by special act of Congress, either by express terms or by strong implication."

2d. " When it is stipulated for in the contract."

3d. " When the claim is for advances made to the United States; though this exception has its limits."

4th. Under decisions of the Supreme Court of the United States.

The two latter exceptions, the 3d and 4th, come directly up to our case, because the record before you, and the testimony of the jurors, show you that this case is a claim almost exclusively for money ad-

vanced, which covers the third exception. And the Supreme Court has decided, that interest was payable on those post office drafts, in the case of the Bank of Metropolis, 15 Peters, *suprà*—which opinion fully sustains the opinion of Justice Story, in the case of United States *vs.* Thorndike, 2 Mason's R., *suprà*, which secures to us the *fourth* exception, and is therefore an authority in our favor.

But the concluding proposition we shall submit, as to our right to interest, is, that whatever might have been the character of the original dealings between the parties, this case, as a *verdict* of *a jury*, and *judgment at law*, must bear interest from its rendition.

Such is the settled law of England, of the United States, and of each individual State of the Union.

From *Sedgwick on Damages*, we learn the English rule to be thus:

"Interest is sometimes given in error, by way of damages. In an early case, on affirmance of judgment in the king's bench on error, a rule was obtained to show cause why the master should not compute interest, and add it to the costs, on the ground of an old statute which enacted, that on a writ of error being brought, and judgment affirmed, the person against whom it was sued out shall recover his costs and damages, ;. and it was held that 'interest ought to be the measure of damages,' and it was allowed."—(See Sedgwick, *suprà*, page 404, and cases cited.)

"In New York it has been decided that interest is recoverable on an action of debt on judgment, whether the original demand carried interest or not." *Ibid.* 406; Klock *vs* Robinson, 22d Wend. 157, where the English cases are reviewed.

The revised statutes of New York provides that—

"If upon writ of error, the judgment be affirmed, or the writ be discontinued or quashed, or the plaintiff in error be non-suited, the defendant in error shall recover costs, and *also damages for the delay and vexation, to be assessed in the discretion of the court.*"

A similar statute to the above exists in all the States.

The same principles of *interest* or damages have been established by the American Congress, and are observed by the Supreme Court of the United States.

"By the judiciary act of the United States, the Supreme Court is authorized, in case of *affirmance of any judgment or decree* to award to the respondent *just damages for his delay.*"—(See Sedgwick, *suprà*, 405.)

The language of the statute alluded to is:

"As where upon such writ of error the *supreme* or a *circuit court* shall affirm a judgment or decree, they shall adjudge or decree to the respondent in error *just damages for his delay*, and *single* or *double costs*, at their discretion."—(See judiciary act 1789, 1 vol. Stat., p. 85, chap. 20., sec. 23.)

The same principle has been further adopted by an act of Congress, passed and approved August 23, 1842, which reads:

Sec. 8th. "*And be it further enacted*, That on all judgments in civil cases, hereafter recovered in the circuit or district court of the United States, *interest shall be allowed*, and may be levied by the marshal under process of execution issued thereon, in all cases where, by the

law of the State in which such circuit or district court shall be held, interest may be levied under process of execution on judgments recovered in the courts of such State, to be calculated from the date of the judgment, and at such rate per annum as is allowed by law on judgments recovered in the court of such State."—(See 5th vol. Stat., p. 518.)

It will be seen that this act is "*supplementary to the act*" (see title of the act, *suprà*, p. 516,) of 1789, and was doubtless enacted principally for the benefit of the government, as all the States have an act giving interest on judgments in suits between citizens, and there was, therefore, no act requisite to afford them such remedy; the State statutes, in addition to the act of 1789, being sufficient for that purpose, besides a rule of the Supreme Court of the United States in force on the same subject as we shall presently state.

It will also be observed that neither the act of 1789 nor the act of 1842 makes any exceptions in favor of the government when the judgment or decree may happen to be rendered against it; but that the act of 1789 says: "*in case of the affirmance of any judgment or decree*," &c.; and the act of 1842 says: "in *all judgments or decrees* in civil cases," &c., *interest* or *damages* shall be allowed. We have before stated, and which we think is correct, that exceptions in favor of any party to create an exemption from the effect of a law *must always be expressed*, and *never implied*. The enactors of these laws not having taken the responsibility to insert any exceptions in favor of the government, we submit whether it can be proper, or legal, for this court to supply the same, when, in so doing, it would be to obstruct the ends of justice. If such can or should be done, then we would have the practical existence of a law passed by our national legislature, creating a remedy in favor of the government against the citizen, and denying the citizen the benefit of the same law when in his favor; and that too, though the laws themselves do not say so.

And this principle becomes the more exceptionable, when we remember that before the institution of this tribunal, the citizen could only meet the government in court in the attitude of defendant, where *it* could force *him* to appear and defend, or stand precluded of his rights, with a judgment against him by default; when at the same time, if he did defend, he could derive no benefit from it, or if he should get a judgment, the same might stand unsatisfied till eternity without bearing him any interest; which, if against him, he would be compelled to pay. We cannot apprehend the announcement of any such a decision by this court, but claim and expect the full benefit of the laws as they read on their face, and as justice and reason demands.

But there is another established provision and lawful authority on the subject of *interest* and *damages*, to which we claim that Mary Reeside is fully entitled in the present case; that is the rules made by the Supreme Court of the United States, which we alluded to a moment since.

Sedgwick, recognizing these rules as sound law, introduces them in his work on Damages, thus:

"By the rules of the Supreme Court, in cases where the suit is for

mere delay, damages are to be allowed at the rate of *ten per cent. per annum* on the amount of the judgment *to the time of* the affirmance.

"And in cases where there is a real controversy, the damages are to be at the rate of six per cent. per annum only.

"And in both cases the *interest* is to be computed *as part of the damages.*"—(*Suprà*, 405.)

The rules of the Supreme Court upon which the above text is founded were established as early as 1803, and further defined in 1807, thus:

1803. "*It is ordered, in all cases* where a writ of error shall delay proceedings on the judgment of the circuit court, and shall appear to have been sued out merely for delay, damages *shall be awarded at the rate of ten per cent. per annum.*"

1807. "*It is ordered*, That where damages are given by the rule passed in 1803, the said damages shall be calculated to the day of the affirmance of the judgment in this court.—(See Rules Supreme Court.)

We submit whether, under all the circumstances which surround this case, if Mary Reeside should not be allowed the fullest benefit of the above rules, as established by the Supreme Court.

Considering the great time consumed by the government in preparing for the prosecution of its suit from and after the time Reeside's contracts expired, say from 1836 to 1839, and then after the institution of its suit it took upwards of two years more to further prepare its facts, exhibits, and proof, to maintain its action, as stated; and then, observing, too, the fact, as shown by the proof of the great latitude claimed, granted to, and exercised by the government in the presentation of its cause before the jury, at the time of trial, there can be no grounds to suppose that it was in any manner unadvised of any and all facts which could be of service in sustaining its demands against Reeside, or in lessening the verdict rendered in his favor after the result was known.

If in these deductions we are right, there is no justification to be found for the government's consuming the time it did, so much to the prejudice of Reeside, in the getting up of its pretended writ of error, and which gives us just grounds to claim that it stands guilty of that species of "*delay*" which should subject it to the *ten per centum* damage as provided by the rules of the Supreme Court.

And in support of this position, we may also justly cite the circumstances under which that writ of error was issued. It is shown you, by the record, that after the motion for a new trial was overruled on the 12th of May, 1842, and the government declared its intention to sue out a writ of error, that it took no steps towards doing so till Reeside, becoming impatient of delay, and pressed by his pecuniary demands—a necessary consequence of being so long deprived of so large a sum—had memorialized Congress for an appropriation to pay him the amount of the verdict rendered in his favor by the jury. This memorial was presented to Congress on the 18th of July, 1842. Two days afterwards, to wit, on the 20th, the committee to whom was referred the memorial of Reeside, addressed a letter to the Postmaster General on the subject. That department, through its auditor, Mr.

E. Whittlesey, responded to the communication of the committee on the 1st of August, just *eleven* days afterwards, but before doing so, took the time and pains to address a letter to the United States attorneys at Philadelphia, giving them, no doubt, orders to have a writ of error issued, and then, after being advised that such was done, informed the committee, in language somewhat indefinite, that the government counsel had *just issued a writ of error,*" but don't say when it was done, nor set forth the writ, and suggested the impropriety of Congress taking any steps in the matter, which suggestion had the desired effect of stopping the action of that body.

Then, when we look further into that matter, we perceive, from the records, that even the precept for said writ of error was not entered till the 27th of July, 1843, just *nine* days after Reeside presented his memorial, and *seven* days after the committee advised the Post Office Department of the fact; and the writ itself was not actually filed till the 29th of July, only *two* days before the indefinite letter addressed to the committee by Mr. Whittlesey on the 1st of August.

(See the letter of Mr. Whittlesey, p. 2, in the amended petition. Also the precept and writ of error, p. 15, in the record of the mandamus.)

In view of this very strange official proceeding, and the unanswerable force of the significant facts we have shown to exist, we feel authorized in asserting, that *the entering the precept* for, and *the suing out* of that writ of error, on the 27th and 29th of July, 1842, was nothing more nor less than an *official trick* on the part of the author of that ingenious movement, to hinder and delay the proceedings of Reeside in collecting the verdict and judgment rendered in his favor; and therefore demands the most rigid application of the remedies provided by the supreme tribunal of our land for the benefit of parties injuried by such dilatory proceedings.

Were this a proceeding between individuals, or had Mr. Whittlesey been the plaintiff in error, instead of the United States, Mary Reeside would certainly be entitled to the full benefit of the measure of compensation provided by the Supreme Court. Why should not the *sovereign* employer, for whom he officially acted, be held subject to the same responsibility? We see no reason for the application of a different rule, unless it may exist in the *barbarous* and *obnoxious* exercise of *irresponsible might* over *indubitable right;* that a proud and haughty government, claiming *boundless sovereignty*, dispensing its patronage and power, is arrayed upon the one side, while an *humble widow* and *orphan children*, with no favors to bestow, supplicating for justice, stand, down-trodden and dejected, upon the other.

We deny that this disparity of parties should at all shorten the standard of justice, or limit the measurement of right; and, if there be a power pleased to enforce such a rule upon us in practice, it cannot be because it finds any sanction for such in any known principles of justice. Should it, or can it, make any difference in the construction of a rule of law, that the government is the debtor instead of the creditor? In the language of Justice Story, in the case of Thorndike, before cited, we claim that, "*in reason, in justice, in equity, it ought to make none; and there is not a scintilla of law to justify any.*"

Believing we have the clearest right to demand the fullest benefit of the principles of law and practice we have just stated, we claim that Mary Reeside is entitled, according to the provisions of the Supreme Court to *damages* in *interest at the rate of ten per cent. per annum*, from the rendition of the verdict till the dismissal of the writ of error, on the 21st of January, 1843.

It is true this allowance will only make a difference of some few thousand dollars in the amount to be paid, but, nevertheless, a very important one to the widow and orphan children of James Reeside, in view of the heavy expenditures incurred in the prosecution of this suit and the enormous liabilities that have accumulated upon their estate, in consequence of the government not paying them the sum which it justly owes them.

But if we shall not be deemed entitled to the *ten per cent.* for the time claimed, then we insist that the rules of the Supreme Court we have cited are unanswerable authority for the payment of *six per cent.* interest on the amount of the judgment from the time the same was rendered.

We would further state, upon the question of interest, that we feel authorized in claiming, there is not the first conceivable ground upon which its allowance can be rejected, in obedience to any known or recognized principles of law, equity, or right. Whatever may have been the precedent or practice in other matters of a different character, or whatever other rules the government may have adopted, as applied to different subjects of demand against it, *none* of those rules, usages, or precedents, can apply to this case without annihilating every vestige of principle upon which the government can be supposed to recognize its obligation to pay interest to its own citizens upon any state of case, or upon any consideration.

So far as the rights of the parties here are concerned, we can afford to indulge the government in all the nicest technical exactions which its most arbitrary policy may conceive, and still have the clearest grounds left upon which interest can be justly, legally, and rationally demanded, and which require that it should be paid.

As a liquidated demand, this case has been ascertained, not only upon accounts stated, vouched, and audited, but by the much more solemn form of an inquest by a court and jury, pursuant to an action brought and most vigorously prosecuted by the government in its own courts, to test and invalidate the same; and, therefore, stands before you as the unimpeached and unimpeachable award and judgment of a government tribunal. As such it has been constantly and unceasingly demanded, and pressed for payment in every possible shape, from and since the rendition of the verdict; so that no *laches* of any species can attach to the claimant. We have hereinbefore shown how her applications have been disposed of, which but shows the heedless neglect with which the rights of our citizens are sometimes treated by our government, and the impunity with which they may be trampled under foot.

If the amount has now grown large, and near or quite doubled itself, such is not the fault of Mary Reeside, but the wrong of the govern-

ment, which should have paid her the sum justly ascertained to be due her long ago.

Apply to this case the principles laid down by the Solicitor of the Treasury in the Stockton & Stokes case, and recognized by both Congress and the Supreme Court as *lawful* and *just*, even supposing the original demand to have been alone for services performed, and you are fully authorized and required to allow interest from the date of the verdict to the moment of entering your decree.

But then you perceive that this case reaches to another and higher grade of demand for the payment of interest, than would be found in this view of its merits alone.

You are advised by the records and proofs before you, that nearly the whole of this verdict is founded upon *drafts negotiated* and *money advanced* and procured by James Reeside, for the use and benefit of the government.

Those drafts and advances, both by *usage* and *law*, affirmed by the decisions of the United States circuit and supreme courts, *all* bore interest as the most positive governmental obligations, before the same were resolved into a *verdict* and *judgment* by a court and jury.

You, therefore, need to do no more than apply to this case the principles laid down and resolved into law by Congress in the cases of Converse & Reese, Howland & Aspinwall, and Abraham Harboch, and still more especially and directly in point the case of the United States *vs.* the Bank of Metropolis, decided by the United States circuit and supreme courts, and subsequently recognized as legal and proper by the action of Congress; and you are at once sustained by both *law* and *precedent* of the highest order in the allowance of interest upon this verdict. Indeed, we think the case of the Bank of Metropolis, being a verdict of a jury, upon offset pleaded to the suit of the government, founded upon the drafts of Reeside, similar to those which compose this verdict, is, or ought to be, conclusive of the present case in all its features.

Consistent with all these views, you are also sustained and authorized in the allowance of interest upon the general principles and jurisprudence of all civilized governments and nations, which universally require the payment of interest upon all judgments and decrees of their judiciary; because all debts and demands thus ascertained to be due are deemed to have received the highest sanction that human compact or assent can confer. They stand as covenants between the parties, executed by the solemn sanction of the law, and presumed to carry with them every species of obligation, both as to the established principal sums, and the subsequently accruing interest, that any individual agreement could create. Thus it is, that an action *in tort* for an unliquidated demand, which could not bear interest *before*, does bear interest *after* being resolved into a verdict and judgment by a court and jury. Why should this, or any other tribunal, wish to exonerate the great *governing head* from the observance of those established principles of jurisprudence over which it is privileged to preside, and which it is its duty to enforce? If this is not done, then interest *must* follow, and be allowed on this verdict.

Another principle of law and equity which has ever been recognized

by Congress in the payment of interest, and which is applicable to the present case, is this: that wherever the party, to whom the sum to be paid is due, has been or is required to pay interest on the sum advanced, or the thing performed for the benefit of the government, or in consequence thereof, then the government has ever recognized it as proper that interest should be paid. Such has been the action of Congress in refunding to the States money paid or advanced for the use of the general government, and in the payment of commutation claims, &c. In this case you are advised by the proceedings before you, that Reeside was compelled to pay interest on all the moneyed transactions he negotiated for the government. You are told by his executrix, that these debts accumulated so large after the death of her husband, that the whole of his estate, being hypothecated for their payment, has been swept away; and it is also a fact of record, that judgments at law, approximating the sum of a hundred thousand dollars, mostly for money borrowed, are still standing unsatisfied, and all bearing interest from about the years 1838 till 1844—within which periods the same were rendered.

If, then, the government does not pay interest on this verdict, it will stand guilty of the *barbarous* and *merciless outrage* of withholding the sum justly due to the widow and children of James Reeside, till a large indebtedness, accumulating with interest, which they are compelled to pay, has actually swallowed up their whole substance, inheritance, and just hopes of pecuniary independence, and absolutely reduced them to destitution and poverty. Is there such a defect in our system of government as to permit of this oppression upon our people? Or is there in its organization a power or a will to require it?

After a careful consideration and review of all we have seen urged against the payment of interest to our people upon just and liquidated demands against our government, we feel constrained to say they do not appear to be well sustained by sound principle. We think it anything else than satisfactory or just in the government, through its tribunals, to say it will not pay interest because there is no special law or statute to that effect, in the absence of express agreement for the payment of interest.

In answer to such reasoning, we would say that if express law, or special contracts alone, can authorize the payment of interest, this government itself would have to refund immense sums, obtained in the shape of interest, in the absence of either *statute* or *contract* and modify many demands which it now holds against its citizens. For it should be remembered that the government has no more *statute law* for the charging of interest than it has for, or against, the payment of it. It has no special statute authorizing it to charge interest upon its demands against the people in any shape; but still we see that it does charge interest. Why? Because it adopts the usages of the times, sanctioned by the common jurisprudence of the land, and claiming that its revenues, when out of its treasury and immediate use, should not be idle, but yield the established per centum of the State or locality in which such debt happens to be due. And this, too, although there

is no statute law permitting it to make such charge of interest upon any debt of the kind.

If, then, the government can charge interest in the absence of express law, why should it not pay interest, on the same principle? We apprehend there can be no better reason assigned than the mere physical ability to enfore the payment of it in the one instance, and to resist it in the other. There is, certainly, something very contradictory to true republicanism in the exercise of any such despotic rule.

Nor do we see anything more sound, nor consistent in theory, in another position we have seen assumed, which is this: we are sometimes pointed to the fact that there was a time when no such thing as interest was known to the law, or when it had no legal sanction—that the legality of interest is a thing of modern statutory invention. Admit this to be so; is it not likewise equally true that there was a time when title to many species of property, now held by *legal* or *customary* tenure, was not known to the law?

But society has progressed. Man has emerged from barbarism to civilization; is still progressing. With his moral and social development, have sprung up and attended his march many necessities, which were not necessities in his primitive state, but now indispensable to his well-being. Among these are established possessions, real and personal, guaranteed by adequate laws. These possessions may consist either in the *soil* or *the products* which are manufactured from its growth, or in the circulating medium called *money*, the latter being the active representative of the former.

To make this property useful or desirable, it must be capable of producing. Society, in its well directed efforts, has most effectually produced this result. Hence, we see around us those estates and establishments which adorn and dignify civilization.

But the same necessity and development which has so elevated and rendered necessary and useful property in its technical sense, has likewise brought up the standard and worth of its representative, *money*, since the latter forms the consideration for the purchase of the former; both must, therefore, keep pace together. Inasmuch as *property*, to be useful, must produce either rents or profits, *money* to correspond in value, must yield *interest;* both having grown from the same necessity should be equally protected by law.

Hence this rule has been laid down by the commentators upon the laws of nations, and which has been engrafted upon, and forms part of, our municipal laws, that

"He who is the owner of a thing is likewise the owner of its fruits and profits; so that it is properly a damage to be deprived of them, as it is to be deprived of the thing itself." And

"In estimating the damages which any one has sustained, when such things as he has a perfect right to are unjustly taken from him, or withholden, or intercepted, we are to consider not only the value of the thing, but the value likewise of the fruits and profits which might have arisen."—(See *Rutherford, Grotius, Vattel, and Wheaton, suprà.*)

We perceive, therefore, that the legal as well as rational right to interest or damage for the detention of a debt, *in money* or property

withheld, or appropriated, is not altogether a barbarous innovation upon established principles, as some suggestions we have seen would threaten to make it; but is, in a great measure, if not entirely, the result of the common consent of all civilized nations, ripened into law by necessity; and, like many other of the most valuable rules which govern the rights of property, finds its chief support and sanction in the enlightened justice upon which it is founded. And we do not think it is proper to offer to resist the payment of interest by going back to a period when such was not known to law, (and to get to this point, it is requisite to go a great way back, and to a time anterior to the date of this government,) than would be to pursue the same course of reasoning and authority to defeat many other of the most valuable rights now sustained by either *law* or *custom*, and which are deemed indispensable to the well-being of society, or the intercourse and commerce of nations.

If these principles, so just and consistent with every idea of individual or associated right, are to have no weight in settling this question, because the government has not seen fit to bind itself to their observance by special law; and that, too, although it charges interest upon every species of demand against the citizen, in the absence of any statute authorizing it; and if the government can only extend such rights and remedies to the citizen as it may have bound itself to do by special enactment, it then must follow, as a settled fact, that

This government may, at its pleasure, take the private property of the citizen, and appropriate the same to the public use absolutely and forever; or make a forced loan of the citizen's substance for any or an indefinite time, and allow him no compensation whatever, either in interest or damages; and this, too, right in the face of the *fifth* article of the amendment of the Constitution which forbids such an act as positive as language can do—for it says: "*Nor shall private property be taken for public use without just compensation.*"

In asserting this position, we do not go a particle beyond the principle laid down by our commissioner, Mr. Cheeves, when urging the claims for indemnity of our citizens against the British government, hereinbefore cited, which was this: "*He who deprives another of the use of his property, does him as great injustice in principle, if not in degree, as he who deprives him finally and forever of it.*"

Then we submit the question, if the government may thus deprive our citizens of the use of their property and make them no recompense, why may it not, in obedience to the same authority or power, withhold or keep the property *itself* absolutely and forever? Is not the principle the same in either case? And if its sovereignty can sustain it in the one instance, why not in the other also? This is doing no more than reducing the proposition down to its real practical meaning, and, we think, is deserving of an answer as distinct and specific as the importance of the question suggests.

But the Emperor of Russia, (though the master of serfs and vassals,) when sitting as umpire upon the rights of our citizens, said:

"The United States of America are entitled to a just indemnification from Great Britain for all private property carried away by the British forces." And pursuant to this just award, the United States,

through their commissioner, claimed, as the only true measure of "*indemnification*," that justice equally required they should be indemnified as such for the "*use* as *for the loss* of the principal thing."

Upon the same principle, we respectfully but earnestly submit, whether this court, sitting as chancellors, can render an award in this case less co-extensive and equitable than did the Emperor of Russia in the case just cited? or whether the government can refuse an "*indemnification*" equally ample and complete? Give the complainant but such an award and indemnity in spirit and in truth, and she will be content; but to allow her less, she will not be indemnified, and justice will not be done to her.

But in the absence of any special law prohibiting or allowing interest, and aside from the precedents and authorities we have cited, and which we insist are conclusive in the present case, we claim that we would be entitled to *interest* or *damage*, (whichever you please,) by the *Constitution* of the "United States," the great paramount, organic law of the land, which proposes to "*establish justice*" for the citizen as its primary and essential object, and, in pursuance thereof, pledges him, as before repeated, that his "private property" *shall not* "be taken for public use without *just* compensation."

In a case, then, where there is no special law, and the rights of the citizen are to be seriously affected or destroyed for the want of such, and the act so done would be at variance with both the letter and spirit of the Constitution, we submit, as a sound principle of constitutional law, whether a proper remedy and redress cannot be found and administered by this court, acting as a government tribunal, under the language and provisions of the Constitution above stated?

We assume the position as true, where a right is secured to the citizen by the language of the Constitution, that it is not in the power of the legislature by any *act*, or the government by any *usage*, or its tribunals by any *decision*, to take such right from him, or to withhold the same under any pretext whatever, because such, when it attaches, is an *inalienable right inherent to* the citizen, of which the government has no granted power under the Constitution to deprive him.

And we further claim it to be sound constitutional law that when a government *judicial* tribunal is appealed to for legal redress for the private rights of the citizens improperly withheld from him by the government, and there is no specific legal redress provided by statutory enactment, that such tribunal may properly look beyond any omission to provide such remedy, and, applying the great fundamental provisions of the Constitution, grant the proper relief; if it be such as is embraced within the obvious intendments as well as language of the Constitution, as expressed in that instrument.

As, for instance, the Constitution, as we have seen, proposes to "*establish justice*" for every American citizen, and declares that he shall not "be deprived of life, liberty, or *property*, without due process of law; *nor shall private property be taken for public use without just compensation.*"

Congress may, and *it is their duty* to, pass all requisite laws to secure to the citizens "*justice*," and to protect them in the possession of their "*private property*," and to provide them with "*just compensa-*

tion" when such "private property" shall "*be taken for public use;* but Congress can pass no law whatever prohibiting or denying to the citizen either of these rights. Why? Because they are guarantied, pledged, and enjoined by express constitutional provision, and therefore paramount to repeal or limit by Congress, or any other body.

If, therefore, Congress cannot, by any law or act, deny to the citizen those rights, can it any more effectually defeat or limit the same by refusing or omitting to pass suitable laws, and to create proper tribunals to secure and administer them? Or, in other words, can Congress, *by omission*, destroy or defeat a right which they could not do by *commission?* We assume they cannot; that the *Constitution* is the great statute of this land, to which nothing can be supreme while it exists, and that its great ends can no more be defeated by the *omission of any body* than by the *commission of any act;* and that when any of the rights secured by it to the people are in jeopardy, and the government judicial tribunals are applied to for remedy and redress, that such tribunals may look beyond any *legislative omission*, where there is no law passed either way, and apply the provisions of the Constitution, and administer the proper relief.

If this was not so, then it must follow that the provisions of the Constitution, providing for and pledging the rights and liberties of the people, are silent and valueless, unless they are re-enacted through the medium of Congress; and if that body refuse or *omit* to act, then the citizen may be deprived of the benefits of the Constitution itself; and the worst of oppression may be perpetrated upon any citizen or *people* in bold defiance of the Constitution, because Congress by neglect or design should refuse to enact a proper or special law for their relief.

We deny that such is the theory of our government; that it is not in the power of any tribunal, or department thereof, by *trick*, *artifice*, or *policy*, to divest the citizen of his constitutional rights. The Constitution of the United States is, to the American citizen, a great omnipresent spirit, ever with and inseparable from him. It receives him upon his advent into existence, and spans its protection over him on his voyage of life, from his birth to his grave. It is the *orb* from whose genial sunlight is warmed into confidence his pride as a freeman. What it promises are his rights, as absolutely and inseparably as the breath which vitalizes his body; and the sinister policies of political philosophers can no more deprive him of the same than the false anathemas of the atheist can expunge or lessen the sacred truths of Holy Writ.

It is this principle alone which so vitalizes our republican system as to enable it to meet any demands which the greatest emergency may require. It is this which secures and establishes our rights as freemen, in despite of party strife, partisan ascendency, or *legislative misrule;* and without it were so, it would be a mistake to claim that we were protected in our constitutional rights, if the omission of any department or tribunal could defeat them. For we hold the position to be sound and correct, both in principle and fact, that a department charged with its administration can as grossly violate the Constitution by *omission* as *commission*, and unless the judicial tribunals could apply the supreme law—the Constitution—in such cases, the worst of

consequences might result before the legislative or other proper department could be operated upon; or they might refuse to act, with a view to certain selfish ends.

Suppose Congress had neglected to provide suitable laws for administering the writ of "*habeas corpus*," would not a United States court be authorized, in obedience to the Constitution, to issue such writ, and consider the cause of the commitment, notwithstanding the omission of Congress? Or would the citizen, however innocent, be compelled to lie fettered in prison until the legislature, in its tardy march, might convene and provide a law directing the judiciary to act? We submit that such could not be; that the courts would have the right to look to the Constitution for power and authority to administer the proper relief, and would not be checked by the neglect of other departments.

We hold the same to be true as to all the other rights and remedies pledged to the citizen by the Constitution; and therefore, where the Constitution says, "nor shall private property be taken for public use without just compensation," and Congress has omitted to pass suitable laws providing for such "compensation," either in the way of interest or damages, and the property or substance of the citizen has been either usurped or withheld by the government for so long a time—as in a case like the present, where merely to return the original sum withheld would not be "just compensation"—that a United States court, constituted for the purpose, being applied to for redress, may, in the absence of special law, look to the Constitution, which they are sworn to obey, and grant the proper measure of indemnity, if not as interest, "*eo nomine*," or damage, as "just compensation," which the Constitution expressly declares shall be done.

It is "*justice*" which the citizen should have—"*just compensation*" for the "*use*" of his "*private property*" by the "*public.*" The Constitution says he "*shall*" have it. And no allowance is "just compensation," as we have by the best authority shown, which falls short of an "*indemnity*" equal to the injury incurred "*by the loss of the use and profits*" of the principal thing withheld. You need not call it interest, nor even damage, but you may call it "*compensation;*" that compensation to be "*just,*" must be adequate; and the Constitution is your authority for allowing it, and there is no tribunal or department which can stay the act.

Or the whole principle we are contending for may be stated thus: Where there is a *constitutional* right, and there is no statutory remedy, the common law steps in and supplies the remedy, and the court or tribunal may administer relief by the common law rules, so far as the same may be consistent with the language and intendments of the Constitution, and justice and equity may require.

This is an essential principle in all governments, and especially those which are established upon a written constitution, for all such instruments must be more or less general in their terms, and cannot embrace *in terms* special remedies for particular cases before they may arise, but can do no more than lay down general rules, which are to be administered and applied by enlightened tribunals as necessity shall require.

The Constitution of the United States is a complete illustration of this fact. As applied to the case before us, it could not say more than it did: "nor shall private property be taken for public use without just compensation;" thus applying in general terms to any case wherein "private property" should be so "appropriated," whether by an *overt* or indirect action of the government. It would have been detrimental to the force of the instrument to have attempted any specification of the kind of property—what would constitute the appropriate relief, or the measure of indemnity. But the language is both apt and ample, and covers the whole question as to the right, and properly leaves it to the legislature and courts to originate and apply specific rules. If the legislature, however, is silent, or neglects to provide proper laws on the subject, the Constitution is still in force, and directing that such compensation or redress shall be granted, which it is the duty of the courts to apply according to the rules of the common law; and must, in order to obey the Constitution, deal out "just compensation," either under the title of interest, damages, indemnity, or any other preferred name, only it must be "*just*," and, to be so, it must be equal to the injury done. It is only in this view of our system of government that we can justly claim to have *legal* and *constitutional* remedies for legal and constitutional rights.

The courts of England have long acted upon this principle, and the judges of that country have more than once maintained the supremacy of legal rights against both the neglects of Parliament and the encroachments of the crown. Thus it was in the case of the bankers, over a century and a half ago, when the king, through his ministers, sought upon technical grounds to defeat a right similar to the present, the Lord Chief Justice Holt responded by saying:

"We are all agreed that they (the bankers) have a right; and if so, they must have a remedy to come at it too."

And this remedy was found in the just provisions and intendments of the legal constitution of England, in defiance of the defects of statutes, the policies of the *crown*, or the efforts of its ministers.

It was enough that "the bankers" had "a legal right" to prompt the judges of England to extend to them "legal redress." They did not seek to bolster up the *crown* in doing a manifest wrong to the subject, by narrowing the law within technical limits; but, taking the rational view of the case, that it was the duty of the crown to do justice to the subject at all hazards, so interpreted the laws as to make them serve the only legitimate ends of government—that of protecting the rights of those whom it was its privilege as well as duty to govern and to protect—and gave judgment for the principal sum due, with interest.

We submit, whether this government is less capable of protecting the rights of American citizens than was the English government of protecting the rights of English subjects? and whether this court, acting upon the same principle, will not, in the language of Chief Justice Holt, say, that the widow and children of James Reeside, having "*a right*," shall "have a remedy to come at it too," and that such remedy shall be fully adequate to the injury they have received by the act of the government; and not only give them a decree for the

amount of the principal sum due, but proper indemnity for the loss of its use and profits.

The right, we submit, is *debt of record*, evidenced and established by the highest sanction known to our laws—the *verdict of a jury* and *judgment of a United States court*—amounting on the 6th day of December, 1841, to the full sum of $188,496 06, the whole of which the government has improperly withheld and appropriated to its own use from that day to the present.

For which "use" and "appropriation," the Constitution requires that the government shall make "just compensation" to the parties injured. This "compensation," to be "just," must be adequate, which, according to the common law, must be interest at six per cent. from the time the debt was due to the rendition of your decree.

To which, we insist, should be added *four per cent.*, making *ten per cent. per annum* from the date of the verdict, on the 6th December, 1841, till the dismissal of the writ of error on the 21st day of January, 1843, as "damages" for the dilatory proceedings of the government in that behalf, in conformity to the rules of the Supreme Court of the United States, ordained and established for all suitors, and from which the United States, as parties litigant, can of right claim no exemption.

The full aggregate of the above sums are *justly* and *constitutionally* due to the petitioner, and no less amount can legally or honestly liquidate her demand; and if there be a power in this great DEMOCRATIC REPUBLIC to withhold it from her, it is one of mere *physical might*, which cannot be sustained by *moral* or *constitutional* RIGHT.

The Solicitor's Brief.

Before finishing our task, we think it proper to notice specifically some of the positions assumed by the government solicitor in the brief he has *substituted* in this cause.

And, first, it will be observed that the solicitor urges no objection to the merits of the demand, as set forth in the petition, nor in any way controverts the fact that the full amount, as established by the verdict of the jury, is due to Mary Reeside. The whole of his argument goes so far, and proposes no more than to show that, admitting such amount to be due, the same has not been ascertained in a manner sufficiently *technical* to induce the government to respect or recognize its validity; and therefore insists that the government has the right to re-examine the *merits* of the claim, not upon either the assertion or assumption that a re-examination of the facts would lessen the amount or alter the result, but that the petitioner must set forth all the moneyed transactions and services performed by her *deceased* husband, for and with the Post Office Department, and must also take her chance at reproving the same, in order that it may be ascertained whether or not a less sum may not be found to be due. And all this labor is to be performed by the aged widow of James Reeside, who is destitute of any personal knowledge of any of the items or transactions which

were so thoroughly contested at the trial of the cause and the rendition of the verdict.

In our argument upon the legality of the verdict, the jurisdiction of the court, the manner in which it attached, the character of the issue, the fairness of the proceeding, the immense time consumed in preparation, and the great latitude claimed and exercised at the trial by the government, and its subsequently acknowledging the validity of the whole proceeding, in moving for a new trial and writ of error, we think we have shown sufficient, of both authority and principle, to overcome any such technical objection now, and will not amplify by further arguments here.

We will remark, however, that if such a thing could now, by any known rule of law, be required, this court would assume an almost endless burden, and impose upon Mary Reeside a task which the death of witnesses, the loss of vouchers and decay of facts, must necessarily have put it out of her power to perform; and thus she must of consequence be the victim of the grossest injustice, imposition, and fraud. No satisfactory result could possibly be expected, and it would be tantamount to a denial of justice to require it. We can only be made to believe that this court will impose so monstrous a wrong upon Mary Reeside when it shall have been pleased to do so.

The solicitor claims that "Congress alone can appropriate the public money, and that the power of appropriation involves of necessity the duty of considering the propriety and justice of the appropriation; and therefore it must investigate the facts, and interpret the laws and contracts which occasion the demands for money from the public treasury."

It is certainly true, as we have stated in another part of this argument, (and to which we refer,) that the final order for the payment of money from the treasury must emanate from Congress, and that, as a general thing, that body may investigate the facts. Such is the case in all matters which have originated before Congress, and have not been passed upon and liquidated by either of the other co-ordinate branches of the government. The functions and powers of the legislative department extend quite this far. But when the debt or demand has been thoroughly examined, liquidated, and established by the judiciary, through the medium of a court and jury, the same is then an established debt of record, ascertained by as high an authority as any which Congress can exercise—being the verdict and judgment of a co-ordinate branch of the government, which derives its power concurrent with the authority granted to Congress to legislate—both being simultaneously created by the same instrument, and each equally independent within their proper sphere of action; which ought to be, and we think is, conclusive as to the question of right in the citizen, even was it a matter subject to a concurrent jurisdiction between the *legislative* and judicial departments.

But then, when we see that this is a verdict of a jury and judgment of a court upon matters of legal rights pertaining to the citizen, and is therefore a subject exclusively of *judicial* cognizance which has been rigidly tested in the courts, pursuant to the constitutional mode of re-examining such matters, we think all room for doubt is silenced as to

the finality of the verdict; and that, so far from Congress having any shadow of right to re-examine the same, that it had no constitutional right to have acted judicially upon the original demand, so far as any questions of law or legal rights were concerned. For, as we have before claimed, we again assert that the *legislative* department of this government can exercise *no judicial* functions, either *original* or *appellate*, over the legal rights of the citizen.

Congress is not a judicial body, and cannot be made so, except by the grossest and a most dangerous *assumption of power*, and a positive perversion and disregard of the very language of the Constitution, and its clearly defined and express distribution of power, authority, and duty between the three great co-ordinate, co-equal, and independent branches of the government.

The Constitution says, in the *first* article and *first* section:

"*All legislative powers* shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives."

And the *first* section of the third article declares:

"*The judicial power* of the United States *shall be vested* in *one Supreme Court*, and in such *inferior courts* as the Congress may from time to time establish."

Here we have in full view the grand basis and foundation of these two branches of the government; the one legislative, and the other *judicial*. The one to pass general, or special laws, applicable to the rights of the people; and the other to adjudicate upon, and apply the laws when passed to such rights. This distinction and parallel of the separate powers and duties of each branch of the government is kept in strict rectitude throughout the whole of the *first* and *third* articles of the Constitution, which establishes and grants all powers to each, respectively; and in what feature, provision, or clause, the right of the *legislature* to act judicially can be found, is more than we can discover, and we deny that it does exist beyond the limits of the most *arbitrary* and *pernicious assumption*.

We think there is just as much authority for the *judicial* department to pass a law, as there is for the *legislative* department to decide a question of legal right in the first instance, much less to re-examine the verdict of a jury, or the judgment of a court, after the same has been rendered or pronounced by a government tribunal; that is, by the *supreme*, or any *inferior* courts of the United States. If Congress can do so, then it is not true that "the judicial power of the United States *shall* be vested in one Supreme Court, and such inferior courts as the Congress may from time to time establish."

We cannot believe that this court will sanction such a mutilation of the Constitution, but that it will feel constrained to say it cannot offer to review the facts in this case in any shape, but that the verdict of the jury is conclusive, and must stand. To touch it is to violate the Constitution, and to refuse its payment is the grossest repudiation, abuse of power, and disregard of duty.

The solicitor says: "There are cases in which should Congress fail to appropriate, it would be a virtual dissolution of the government, and the failure would in such cases be a failure in constitutional duty." This we think will not be disputed. But he, by way of limitation to

this very just remark, then states that "this remark applies to appropriations for the support of the government, according to the plain requirements of the Constitution and the laws."

This last statement would indicate that the only duty Congress had to perform in the way of appropriations, was to support the government; that its magnificent requirements, however extravagant, being attended to, the constitutional duties of Congress to pay or appropriate money will have fully ended; that the people, who groan beneath the whole burden of the government, and from whose sweat and toil its whole revenues and resources are drawn, have no constitutional demands upon it; that Congress may refuse, at pleasure, to pay them any just debt, however well established, and yet there will be no injury felt—no Constitution violated—no "*dissolution of the government*" take place, because none of the *sensitively potent* nerves of the *sovereign* machinery are affected or obstructed; but all will proceed harmoniously on so long as its magnificent requirements are pampered and provided for with suitable appropriations of money.

This may be a good sovereign idea, but we think lacks much of liberality to the *people*, and falls essentially short of allowing them their vested rights as proposed by the genius of our *democratic* institutions, and provided for by the plain language and rational intendments of the American Constitution.

So far from such being the true interpretation of the Constitution of these United States, we assume directly to the contrary, and insist that the *private rights* of the *citizen* and the *associated rights* of the *whole people* constitute the foundation and life's essence of our whole *republican system;* and that however injurious thereto it might be in Congress to fail to make the proper appropriations for the government, that it would not only be a still greater violation of the Constitution to refuse or fail to appropriate means to pay the citizens *their* honest demands and just debts, but would be an actual *abandonment* of the Constitution, and subversive of the theory of our government itself—from a supposed republic into an *elective despotism* of the most odious character; and when such a result shall, from misguided rule, be achieved, we shall have but little to cavil about as to what will be our condition as a people, or the inevitable consequences which must follow.

This government is an accredited agent, with a great mission and solemn trust to perform and execute. That *trust* and *mission* consists, primarily, and above all things else, in guarding and protecting the rights of the people, and securing to every citizen those enjoyments pledged to him by the Constitution, and to guard them by adequate laws. When it does this, it will have done the most that wisdom can suggest in providing for its own support and well-being—for with the hearts of the people wedded to it by an unmistakable sense of security, it can never fall, and no "*dissolution*" can be apprehended. But let it prove false to this *first high duty*, and it will in truth be dissolved without a cementing element left to re-unite its servered fragments. And when the solicitor was proceeding to suggest failures in duty on the part of Congress, which might lead to its "dissolution," he might with greater propriety have stated its failure to deal justly with the people as the first and most certain cause; because, aside from this im-

perative and sworn duty, this government has no legitimate claim to another moment's existence. Therefore, however true it may be, that "according to the plain requirements of the Constitution and the laws," it would "be a failure in constitutional duty" on the part of Congress not to appropriate money "for the support of the government," it would be a still greater failure in duty, and a grosser violation of the Constitution, for it to refuse to make any appropriation requisite to discharge an honest debt to the citizen.

And this manifest dereliction of constitutional duty on the part of Congress would be rendered the more flagrant and censurable when the fact should be borne in mind that the citizen is the weaker party; that he has not the physical means of coercion, however just his cause, but relies upon the justice of government in securing to him his constitutional rights. If he has vested rights, and there should be technical impediments in the way, it is the duty of the government to remove the same, and not seek after them to *defeat* his rights. And for the government to put forth such evasions, is nothing more than pleading its *own omissions*, thereby taking advantage of its *own wrongs* to destroy the rights of the citizen, for which it was *its special* and *exclusive* duty to have provided him with a full and ample remedy.

The obnoxious idea that the PEOPLE are only fit to toil and support *government*, is a theory well understood in *monarchies* and *despotisms*, but is as repugnant to *democratic institutions* as *vice* is to *virtue*, and is a principle which can find no countenance or sanction in any just interpretation of the Constitution of these United States; none, at least, so long as the precepts upon which it is founded remain written and unperverted, and the English language shall retain its meaning. For, the *Declaration* of our *Independence*—that eternal manifesto of rights, which our *fathers* proclaimed before the world as the just cause for bathing their hands in the heart's blood of their *sovereign king* and *fellow* subjects—asserts, "*that to secure these rights governments are instituted among men, deriving their just powers from the consent of the governed.*" And from this their fiat sprung forth this happy republic, pledged "*to secure these rights;*" and any theory or practice which shall offer to eradicate these fundamental principles must carry with it a total change of our government in all its features, and must establish in its stead a system more uncertain and oppressive than that which the above were the watchwords for destroying. We cannot apprehend that such will find any sanction in the wise judgment of this court.

One other proposition assumed by the solicitor in argument we will notice, and to which we cannot yield our approbation; it is this:

"It is for the legislature to pass laws, the judges to interpret them when suits arise, and the executive to execute them." This we admit, but the following we deny: "In the performance of these several duties, it will often happen that these several departments of the government are called on to interpret the same laws, but the action of each is independent within its proper sphere. Neither is bound to conform to the opinion of the other, where, by the Constitution and laws, such opinion is not coupled with power to enforce it; and, in the absence of such power, such opinions are entitled to respect so far only as they

are supported by reason in the minds of those on whom the responsibility of action is devolved."

With all due respect to the learned *solicitor*, we cannot believe he will strenuously insist upon this position as being altogether consistent with the theory and organization of our government; or that he will not, upon more mature deliberation, greatly modify, if not wholly abandon it. For, if the position be correct, then, instead of there being symmetry and consistency in the three co-ordinate departments of our government, the greatest confusion and uncertainty must prevail in the settlement of private rights, and the worst of oppression result to the citizen.

Is it possible that the *legislature* may interpret a law *one* way, the *executive* a *second*, and the *judiciary* a third, when applying it to the same or a similar private right? If it is, then it must be for no other cause than the one stated by the *solicitor*, that neither has the *physical* power for enforcing the action or adhesion of the other, which is *a cause* only, but without any sound reason to support it, and equally obnoxious in principle, as it would be arbitrary and oppressive in practice.

Why not go the whole length of such theory, and say the judges may find a citizen guilty of contempt; the legislature declare him guilty of a high misdemeanor, and the executive hang him for treason, and all for the same act? Or, that the executive may acknowledge a debt due to the citizen, the legislature bring *him* in debt to the government, and the judiciary order his commitment for a felony; and this, all or either, for no better reason than that he had not the physical power to protect himself, or enforce his supposed rights. This would bring the question of force in full view. And it certainly might be done so far as the one appears to have any recognized right to control, or, as it is their duty, to respect the opinion of the others, according to the position we are controverting, "so far only" as they might be checked by some independent "reason in the minds of those on whom the responsibility of action" should be "devolved," which is the only limit the solicitor acknowledges. For, he says, "in the absence of such power," ("*to enforce*,") the "opinions" of the one department "are entitled to no respect" at the hands of the other.

This would destroy all idea that our government is a *tri-headed unit*, endowed with certain independent but consistent and harmonious functions, but would make it a government with *three independent heads*, exercising *three independent powers*, which may engage in an antagonistical warfare, without any obligation on the part of the one to respect the actions of the other; and this, too, although the solicitor first sets out with the position (and which is strictly true) that "it is for the *legislature* to pass laws, the judges to interpret them when suits arise, and the *executive* to execute them;" which we think directly contradicts and overcomes all his subsequent hypotheses.

We take the Constitution and the distribution of powers therein contained, so far as they are to affect the private rights of the citizen, to mean this: that the legislature is to pass laws affecting those rights, the courts are to interpret the laws, and decide as to their applicability to a particular state of case or facts, and pronounce judgment thereon; and it then becomes the duty of the executive to see that the judgment

of the court be carried into effect. By this rotation of duty and separate power, our government is truly composed of legislative, executive, and judicial departments. If the one can annul and disregard the action of the other, then there is a radical want of efficiency in our governmental system; or if either can absorb the functions and powers of the other, then we have at least two superfluous departments. But the whole of this conflict and confusion is readily escaped by treating the Constitution precisely as it reads, and not attempting to transfer the duties and powers of either one of the departments to the control and exercise of the other; and for neither to assume any powers not delegated to it by the Constitution.

And this position becomes the more obvious when we perceive there is no concurrent jurisdiction upon the same question of right between those three established departments; nor is there any appeal from the one to the other, except so far as the constitutionality of a law or a treaty may be in contest; and then such appeal moves from the legislative or executive towards the judicial department, as the Supreme Court is alone invested with the *revisory* power in such cases; and *it* is limited to saying whether the particular *law* or treaty is or is not constitutional, but has no power to make, or even propose, a different *law* or *treaty* in their stead.

From these views, if correct, it must follow that an act done in either department of which it has constitutional jurisdiction, and where there is no mode of review pointed out by the Constitution, must be deemed complete within itself, and that neither of the other departments have a right to even review, much less annul the act done; and especially for no other reason than because it became necessary in the order of proceedings that it should pass under their partial conduct in its progress to final execution. And especially should this be the case in all judicial awards, after having been passed finally upon by the authorized courts.

We will dispose of this question by adopting the language of an able, experienced and distinguished jurist, the Hon. George M. Bibb, when submitting an argument before Congress in the case of Satterlee Clark, which we have shown was similar to the present, and which views were acquiesced in by Congress in disposing of that case, which we think ought to make them more authoritative in the present. Mr. Bibb said that "governments must have fundamental (that is invariable) laws, operating uniformly, and administered equally and impartially to all. Miserable is the servitude where the laws are uncertain and variable in their effects upon different individuals in like circumstances. Intolerable is the grievance, when the same laws have different meanings and effects upon different individuals in like cases, as they shall happen to be expounded by the judiciary, or by the executive, or by the legislature, in remedies falling respectively within the proper sphere of those several departments.

"One fundamental rule indispensably necessary in every government is, that where the supreme judicial tribunal has expounded the meaning of the law, and administered it to individuals according to that exposition, *all other officers* of the *other departments should administer it in like manner to all persons asking redress under similar*

circumstances. This course is necessary *to curb favoritism in the rulers*, to *inspire confidence in the people*, repress convulsions, insure tranquility, and promote the general welfare by *establishing equal* and *uniform justice.*

We insist that "*equal and uniform justice*" is precisely what is due from this government to its people. That such was its incipient obligation at the moment of its creation, and hence inserted it in its title clause, and organized the three departments with their separate and respective powers, but to carry out and render this system of "justice" complete; to act as aids to, and not obstruct the actions of each other, for either selfish or captious reasons.

We assume, therefore, that the argument of the learned solicitor in this behalf cannot be regarded as establishing sufficient or valid legal grounds to authorize the court in any attempt to review this verdict in any shape whatever.

Miscellaneous Suggestions.

In referring to the "act for the relief of the Bank of the Metropolis," a matter presents itself which we deem it proper not to omit noticing before closing this argument.

The *third* and *fourth* sections of that act read thus:

"SEC. 3. *And be it further enacted,* That the amount of said five acceptances of the said department, for which it was adjudged by the said circuit and *supreme* courts that the United States were liable in law, and for which it appeared *no service* had been performed by the said contractors to the said department," &c.

"SEC. 4. *And be it further enacted,* That the said Auditor of the Treasury for the Post Office Department be, and he is hereby, directed to charge the amount of the said acceptances to the contractors respectively in whose favor they were severally given," &c.

(See 9th vol. Stat. p. 690.)

It will be seen that this *third* section discovers the fact, or rather assumes it, that the service upon which the acceptances held by the Bank of the Metropolis were given was not performed; and the *fourth* section directs the Auditor to recharge the same to the contractors.

Is it true that the service was not performed? Or were facts visible in the record, or out of it, to warrant such an assertion at the time the act in question was passed? With all due deference to the worthy legislators who enacted that law, we feel authorized to say, with the facts before us, that any statement to the effect that Reeside did not perform his full and entire service is wholly assumed and false, and assert directly to the contrary—that Reeside did perform his contracts at all times—such was his standing for twenty years as a mail contractor. He never failed; no sacrifice could dampen the ardor with which he discharged his duty.—(See the deposition of Judge McLean.) And especially will we show, that the whole service was performed upon which were founded the precise acceptances which this *third* sec-

tion would pretend to say was not performed. Upon this question we shall leave no room for dispute or doubt with any mind capable of weighing a fact, and to do which, we shall only use the government's own proof—the testimony of its own officers, which was ratified by the judgment of its own courts.

The facts are these: From about the year 1830 to 1840 the financial matters of the Post Office Department were extremely embarrassed. It had not the means to carry on its business or discharge its duty to the public. To obtain an exact idea of the true condition of things, we refer to the pointed remarks of Justice Baldwin, in his charge to the jury.—(See the charge from page 114 forward.) In this complicated and embarassed condition of things, as we have before shown, the department had to resort to the agency and assistance of its contractors and employés to raise and provide indispensable funds.

James Reeside, then the most extensive contractor in the government employ, and possessing extended credit, was chiefly depended upon to effect these matters. A considerable amount of the acceptances so issued for the use of the department, and sometimes as compensation for service, were discounted at the Bank of the Metropolis, which were not paid at maturity for the want of means, but which had been gradually reduced from time to time till, in the year 1838, the amount unpaid was about $23,000, with interest accrued, which swelled it to upwards of $30,000. The department then had deposited for its own use the sum of $27,000 with the bank. The latter, not liking the symptoms of cutting, slashing, and annulling that was being perpetrated and conducted under the instructions and by the actions of the Postmaster General, resolved to hold on to the $27,000 on deposit, and make themselves as nigh whole as possible. Hence, when the department checked for its funds, the bank refused to pay, upon the ground that there was nothing to the credit of the department.

The department then brought suit to recover the sum it had placed on deposit, and the bank plead the acceptances, with the *interest* accumulated, as an offset, and asked a verdict and judgment over for the amount which the same exceeded the sum of $27,000.

The department made every species of technical plea against the validity of the offset pleaded, and the right of the bank to maintain or plead the same; and among other matters insisted that the service was not performed upon which the acceptances were issued.

The jury, under the instructions of the circuit judge, found all the issues in favor of the bank, and rendered a verdict for the sum of $3,371 94, and upon this finding, the court pronounced judgment accordingly. The government appealed to the Supreme Court of the United States, when and where the same matters before tested were fully reconsidered upon argument; which tribunal, after mature deliberation, affirmed the finding of the jury, and the judgment of the court below; and, upon the question of performance of service as applicable to Reeside, stated as follows:

"What are *the merits of the case upon Reeside's drafts?*

"They were drawn on the Postmaster General at ninety days, payable to the order of the drawer, and were to be charged to his account for transporting the mail. They were accepted on condition that his

contracts be complied with; this is of course as binding as an absolute acceptance if the condition has been performed.

"What is the *proof of performance*, and how shall this conditional acceptance be construed? Mason, the witness, says:

"Reeside, in fact, *performed the service for which he was contractor* in the year 1835; and the money which he earned upon his contracts was applied, to an extent exceeding the amount due upon his drafts, to the extinguishment of balances created against him, by *re-charging him with sums of money which had been allowed to him by Mr. Barry, the former Postmaster General, as contractor for carrying the mail, by giving him credit therefor in a general account current on the journal, but not entered on the ledger, where his account remained unsettled when the present Postmaster General came into office.*"—(See 15 Peters, p. 194–5, *suprà*.)

Here we have the positive testimony of the government's own witness that the service was performed—*fully performed;* and hence, directly contradictory to the assumption in the *third* section of the act.

But supposing there might be some facts set forth in the report of the committee which drafted the law, not appearing on the face of the record before the court, we have examined that document to see if such were the case; but we find nothing of the kind to be true; on the contrary, it seems that the committee deemed the verdict of the jury and the judgment of the court to be so conclusive both as to the facts and law of the case, that it made no report at all as to the facts; but simply reported by bill, in the following words:

"Mr. Hopkins, from the Committee on the Post Office and Post Roads, to which was referred the memorial of the Bank of the Metropolis, reported a bill (No. 191) for the relief of the Bank of the Metropolis, which was read a first and second time, and committed to a Committee of the Whole House, to-morrow."—(See House Journal, 1st sess. 29th Cong., p. 374.)

Considering the positive proof of the performance of service as set forth in the record, and recited by the Supreme Court, and there being no facts in the report contradicting or varying the same, we submit how it is possible for the broad assertion in the *third* section of the act to be true, that "no service had been performed by the said contractors to the said department;" and when, too, the bill reported and passed was predicated upon no other facts than those adduced before the court, and recited by it in the opinion delivered, as above stated. Surely, either gross misapprehension, or wilful design, did egregious violence to the truth in some shape, or for some cause not apparent upon the face of the record.

But the erroneousness of the statement in the *third* section of the act, that no service was performed, is not a little enhanced when we notice another important fact, which is this:

The records show that the United States instituted their suit against "the Bank of the Metropolis" on the 25th day of June, 1838, upwards of a year before the bringing of their suit against James Reeside, which was not commenced till the month of September, 1839. The trial of the latter case, as we have seen, did not take place till Novem-

ber, 1841, before which time "the Bank of the Metropolis" case had been disposed of in both the *circuit* and *supreme* courts, as it is shown that the verdict of the jury and judgment of the circuit court was affirmed by the Supreme Court at the January term, 1841.—(See 15 Peters, *suprà*, 379.)

The question, as to whether the service had been performed, had been fully contested before the jury in the case of the bank as stated. The government was of necessity apprised of the finding of its jury and the decision of its courts, both as to the law and facts touching this matter. It therefore had every opportunity to review and prepare to re-test the same in its pending trial with Reeside, which came on in November following, and which it most thoroughly did.

You are shown by the proof, that the government brought forward at this trial all the items upon which it had been defeated in its previous trial with Samuel L. Gouverneur, at New York.—(See the testimony of Mr. Gouverneur, and Mr. B. F. Butler, United States attorney, pages 8, 9, printed notes of trial.)

By the testimony of Messrs. Groves, Martin, and Coxe, you are advised that the government brought forward new and distinct items of charge, and re-introduced its witness and proofs to sustain the same, till it had nothing more of either to present; and that it met with the most stubborn and technical resistance, every item of fact, charge, demand, and defence which Reeside adduced or set up, till it exhausted its resources of proof, both oral and documentary. Must we not therefore conclude, that it availed itself, in this trial with Reeside, of all possible grounds which it had failed to sustain in its then recent trial with the "Bank of the Metropolis?" Does not every fact and incident of that trial show this to be true? Look candidly at the whole facts, and answer the question to the contrary who will. Never was there a suit more thoroughly contested than was that of the United States against James Reeside.

The previous suits against Gouverneur and the Bank of the Metropolis had furnished the government two distinct opportunities to test the validity of a large portion of Reeside's transactions with the Post Office Department, and to handle the same in all their phases. Then, when the trial with Reeside was had, it came into the contest with a full knowledge of all these proceedings, both as to law and fact, and again made a most desperate struggle to overthrow his demands. But both its courts and juries, in that as in the former trials, decided against the government and in favor of Reeside. Yet strange, very strange to say, at a period of more than six years after the last of these most thorough adjudications of the facts, upon the best proofs that could be adduced, which we see were solemnly sanctioned by the courts, we are presumptuously told, directly in the face of all these proceedings, that Reeside failed to perform the service stipulated in his contracts, and he is directed to be charged with those acceptances, when the very record upon which the act making the appropriation for the payment of the verdict and judgment in favor of the Bank of the Metropolis showed, and does show most conclusively, that he rendered full consideration for every cent they called for.

If such an act as this can be done, and tolerated by the tribunals of

this government, there must be something wrong somewhere or somehow, to whom or whatsoever it may be attributable; for, it is but little use to prove facts by the testimony of witnesses before courts and juries, and procure their decision and verdict on the same, if the bare assertion of a committee in Congress can upset and annul them at pleasure.

But we are not without the means of comprehending the causes and motives which actuated the proceedings of the Post Office Department during the last eight years of Reeside's connexion with it. It was wholly deficient in funds during Mr. Barry's administration. He had struggled hard to sustain it, and was forced by necessity to issue acceptances for the purpose of procuring money, and then, to get them negotiated, had to obtain individual endorsements to make them pass at any reasonable rate in the money market. For this purpose James Reeside, who was the largest contractor in the United States, and whose credit was perfectly good in the principal banks, and with money-lenders, was applied to, and endorsed for the department to a large amount, as we have before stated, and which is conclusively sustained by the proof in this cause.

The immense increase of mail transportation, caused as well by the growth of the country as the exciting political elements of the times, made it necessary for those engaged in transporting the mails to render double, and sometimes treble, the amount of service their contracts stipulated for, which was rendered in what was termed *extra* service, and paid for in proportion to the amount called for in the contracts; much of which was standing, in the shape of allowances made, but unpaid for the want of means, when Mr. Barry resigned and Mr. Kendall came into office.—(*See the charge to the jury of Justice Baldwin, p.* 116)

When this latter functionary came into office he found the department thus burdened with debt, and without either revenue or credit. He attempted to retrieve its financial condition by the most extraordinary methods; such as looking back into the transactions of his predecessor, and annulling, or reversing, his official acts—both as to the allowances made for extra service, and the drafts negotiated for the benefit of the department; and sought to replenish its treasury by arbitrarily withholding the contractors' pay, to satisfy those immense sums, and still require them to comply with existing contracts upon such means as they could best command. These official usurpations, on the part of Mr. Kendall, are established by the decision of the Supreme Court in the case of "the Bank of the Metropolis," upon the government's own proof. On this subject the court speaks thus:

"The witness, Mason, says: From the year 1830 the pecuniary affairs of the department were much deranged, and it was frequently unable to pay debts due by it to contractors. Under such circumstances, the department was in the practice of giving acceptances for sums *less* than were actually standing to their credit, unconditionally; and such acceptances were always taken up at maturity, prior to May, 1835. That occasionally, and with the special approbation of the Postmaster General, acceptances were given upon the faith of existing

contracts, which were understood to become absolute if the contractors performed the service stated in the contract."—(See 15 Peters, *suprà* 399.)

By this means was put in circulation, as we have stated, these post office drafts; but the mode resorted to by Mr. Kendall to meet them when due gives the crowning feature to the whole proceedings, and if not a very legal or liberal way was certainly a very convenient one. We will submit the language of the Supreme Court on the subject:

"Reeside's earnings, between the date of the acceptances and the time for the payment of them, *were not applied to pay forfeitures* or *refund aavances*. They were exhausted by re-charging him with sums of money which Mr. Barry had allowed to him as contractor for carrying the mail, which were credited in the journal, but not entered in the ledger. That they were not posted cannot affect Reeside's right to such allowances; and something more must appear than the testimony in this case discloses, before it can be admitted that credits given by Mr. Barry *were legally withdrawn* by his successor. *There is no evidence in this cause to impeach the fairness and legality of the allowances credited by Mr. Barry—no proof that Reeside had incurred forfeitures, or that advances had been made to him. Proofs should have been given, if it was intended to justify the charges for the causes stated. No* ATTEMPT WAS MADE TO DO SO. The allowances, *then, are credits in Reeside's account, which the defendant may use to prove his performance of the condition of the acceptance. And they do show performance, as the amount claimed would have paid his drafts* IF IT HAD NOT BEEN DIVERTED."—(See 15 Peters, p. 400.)

The Supreme Court, emphatically denying the right of Mr. Kendall to reverse the acts of Mr. Barry, further says:

"This right of an incumbent of reviewing a predecessor's decisions extends to mistakes in matters of fact arising from errors in calculation, and to cases of rejected claims, in which material evidence is afterwards discovered and provided. *But if a credit has been given or allowance made, as these were*, by the head of a department, and it is alleged to be an illegal allowance, the judicial tribunals of the country must be resorted to, to construe the law under which the allowance was made, and to settle the rights between the United States and the party to whom the credit was given. It is no longer a case between the correctness of one officer's judgment and that of his successor."—(See 15 Peters, 401, *suprà*.)

The facts we have cited, together with the opinion of the Supreme Court relative to the same, establishes beyond the reach of doubt three distinct propositions:

1st. That James Reeside performed all the service his contracts called for with the Post Office Department, at all times; and that the *assumption* that he did not do so, in the third section of the act for the "relief of the Bank of the Metropolis," is therefore false and untrue in every sense whatever.

2d. That the money due for his service so performed was arbitrarily appropriated by Mr. Kendall to the use of the government, as a forced reimbursement for sums and credits justly allowed to Reeside by Mr. Barry, as compensation for the immense amount of *extra* service, per-

formed at the request and procurement of the government, beyond what Reeside stipulated to do upon the face of his contract or the law required of him. In this way his earnings were absorbed and diverted from the payment of the acceptances issued to him.

3d. That Mr. Kendall had no right, moral or legal, to so appropriate the money of Mr. Reeside; and that his actions in that behalf were arbitrary in principle and null and void in law.

These propositions considered, we think we may safely claim that no prejudice can result to Mary Reeside, at this day, in consequence of the wholly unsustained statement that her deceased husband failed in any way to perform all the service his contracts called for, or from the unauthorized and illegal direction given to re-charge to him the acceptances issued in his favor, as the language of the *third* and *fourth* sections of the act we have been discussing avers and directs to be done.

We think a very correct exposition of the condition of the department—the conduct of the Postmaster General, and his efforts to raise means without regard to the mode, or hold on to such as he had, without regard to the rights of the contractors or to whom they were due, and which is applicable to all their transactions—may be found in his own confession, by referring back to his treatment of Converse and Reese, and his letter to them on the subject, wherein he boldly tells them their money was withheld "*as a matter of finance*" for the convenience of the department. Thus:

"The department withheld payment on this and on other routes, to Converse & Reese, *to reimburse* the money paid on the first draft, and to indemnify *itself* for *its* liability on the second for having accepted it. *This was done as a matter of finance;* NOT BECAUSE THERE WAS ANY DOUBT ABOUT THE CLAIM. This the Postmaster General *expressly stated to the petitioners,* in his letter to them under date of May 14, 1835."—(See report No. 47, 27th Congress, *suprà*.)

This statement, which no doubt accidentally leaked out, without reflection as to how or where it might be used, nevertheless evidences a most disreputable truth, so far as the government is concerned, and exposes an equally reckless disregard of the rights of its citizens on the part of its ministerial officers. It fully proves how destitute of means the department was about this time, and shows that its chief officer was anxious to strengthen its finances by any other means than an application to Congress; and that, to escape such embarrassment, resorted to the desperate and arbitrary alternative of surreptitiously appropriating the money due to the *citizens* "*to public use*"—money which he admitted to be theirs, due for their faithful service performed, and which he, as a high government functionary and their sworn trustee, was bound in *honor* and in *law* to pay over to them; but which *he,* clothed with office, patronage and power, dared divert to other purposes, leaving the insulted citizens to struggle through their difficulties as best they could, and discharge *their* obligations, which *he,* with *fines* and *penalties,* could force *them* to perform, by procuring means from such sources as they could command. This was certainly *one* way to carry forward the operations of government, and keep its postal machinery in operation, and was possibly deemed right by those

whose sense of justice could permit them to act so—for, in the eyes of tyrants, *expediency* and the *end* in view ever justify the means; but it certainly falls something short of the spirit and genius of these our democratic republican institutions. Language can scarcely afford adequate terms for the condemnation of such deliberate *official malfeasance.*

We think the least effect such a disclosure can have is to cause this court, in its deliberations, to look with every species of distrust upon any statements made against this claim by those who were then in charge of the Post Office Department, or any conclusions that may be predicated upon their statements, which are unsupported by testimony or strong probability.

In another part of this argument we asserted and urged, as a matter of principle, that no statute was necessary to authorize the government to sue in a case like the present; and that upon such suit being brought by the government against any citizen, the latter had the unqualified right to plead as offset all matters of credit which had been presented to and rejected by the proper accounting officers of the government.

But in presenting and discussing those points, though obvious as a matter of common sense, necessity, and justice, we were not aware they had each been so clearly settled by the Supreme Court of the United States, as we have since discovered to have been done in the case of the Bank of the Metropolis.

Upon the first point the court speaks thus:

"No STATUTE IS NECESSARY TO AUTHORIZE THE UNITED STATES TO SUE IN SUCH A CASE. THE RIGHT TO SUE IS INDEPENDENT OF STATUTE, and it may be done by direction of the incumbent of the department."—(See 15 Peters, 401, *suprà.*)

As to the right to plead *all* equitable demands as offset which have been rejected by the accounting officers of the government, the supreme justices laid down the following:

"When the United States, by its authorized officers, become a party to a negotiable paper, *they have all the rights* and *incur all the responsibility of individuals to such instrument.* We know of no difference, except the United States cannot be sued.

"But if the United States sue, and a defendant holds its negotiable paper, THE AMOUNT OF IT MAY BE CLAIMED AS A CREDIT, if, after being presented, it has been disallowed by the accounting officers of the treasury; and if the liability of the United States upon it be not discharged by some of the causes which discharge a party to commercial paper, it should be allowed by the jury as a credit against the debt claimed by the United States. THIS IS THE PRIVILEGE OF A DEFENDANT FOR ALL equitable credits given by the act of March 3, 1797, (1st Story, 464.)

"These principles originated in the convenience of commercial transactions, and cannot be departed from. From the daily and unavoidable use of commercial paper by the United States, they are as much interested as the community at large can be in maintaining these principles."—(See 15 Peters, *suprà*, 392.)

We also submitted, in another connexion, that had Reeside failed to present and assert his entire claim against the government when set-

ting forth his defence to its suit, he would have been denied the right to enlarge his demand, when he should have gone before Congress, upon the plea that he must have been presumed to have asserted all he was entitled to in his offset.

As an illustration of the truth of this assertion, we invite attention to the action of the committee when disposing of a similar matter, in the case of Thomas Fillebrown. It will be perceived, by referring to his memorial, that Fillebrown petitioned Congress for a much larger sum than the amount pleaded and allowed him by the jury. The committee, in disposing of and rejecting that part of his demand, in one of the reports made on the subject, said:

"The committee think the amount charged by the petitioner in his account which was allowed, and his subsequent claim to return one per cent., are conclusive of his own understanding of what would be a suitable compensation for making the disbursements committed to his charge."—(See Report No. 2, 25th Cong., 3d sess.)

Now, what better example need we adduce to show that, had Reeside attempted no more than merely to offset the government demands against him, and then memorialized Congress for the residue of his claim, that he, too, as was Fillebrown, would have been met with the bold avowal, that having omitted to plead and prove his full demand when the issue was made and tried before the court and jury, he must be regarded as having no further claim, because, being in the hands of the judiciary, he must be supposed to have set up in his defence all the rights he then felt he had? Would he, too, not have been told that the amount plead by him as offset was "*conclusive of his own understanding*" of the extent of his rights, and that the large amount asked for in his memorial was all the accumulation of an after-thought, gotten up for the special occasion? That once being before the judicial tribunals, the appropriate forum in which to have tested the legality and merits of his whole claim, he had declined to do so; and that he must, therefore, be considered as technically barred from successfully asking a larger sum from Congress than he had previously offered to set up before the court and jury? Of what use or avail to him would it have been to have responded, by saying that the government would not permit him to plead and prove more than would offset its own claim? None, on the face of the earth! He would have been promptly advised that such was the very object of bringing the suit—that it was for the special purpose of adjudicating upon the full balance and difference *pro* and *con* between himself and the government, and that he had no right to presume the court would not have heard and determined his full claim, or that the government would have repudiated the award and decision of the court and jury; and his excuse being a mere hypothesis, he would have had no means of proof to make it good.

He would have been referred to the cases of Balitha Laws and others, to show that he had authoritative example to the contrary of his pretended excuse for not pressing and proving his whole claim when before the courts, which would have saved so much time and expense.

With these examples and precedents at hand to confute him, in terms and language similar to the above, his memorial would have been

scouted from the committee room, with the triumphant announcement that his case was one of "*res adjudicata*," and all hope of ever getting a farthing from government would have been banished from the halls of Congress. With a fate so inevitable as this was awaiting him, why tantalize him then, or his widow now, with the deceitful insinuation that such would not have been the manner in which his memorial would have been disposed of? or that he would ever have been allowed one cent more than he set up and proved before the court? What would have saved him from a response similar to that given to Fillebrown in a like state of case? Would not the magnitude of Reeside's claim, and the peculiar hostilities arrayed against it, have rendered it the more certain? We answer that it certainly would; and that it is but the most subtle trifling with both example and reason to pretend that his claim would not have been hopelessly dead to all remedial aid, had he not both plead and proved his whole claim, as he did, when the issue between himself and the government was open, and the trial in progress.

To assume that such would not have been the action and resort of Congress, had Reeside failed to prove his whole claim, would be not only contradictory to example, as we have shown, but a resort in argument to a false hypothesis, which derives its only support from the fact that a contrary course was pursued, and therefore places such assumption beyond the reach of practical test; as an act done and performed in one way, and past, cannot be so reinstated as to be tested in another, or an alternate mode. If such hypothesis is insisted upon, it is nothing more than an attempt to combat facts with mere speculative probabilities. If it is not, it must be conceded that Reeside pursued the only course which was open to him to prevent, being cut off from all prospects of ever getting his just dues from government. He did, therefore, all that he could do, and that which for reasons stated he had both a moral and legal right to do, if he had the right to make a defence at all.

In considering the right of Congress to exercise *judicial powers* or to review the verdict of a jury or judgment of a court, in any event, we would also invite your attention to Mr. Madison's report on the Virginia resolutions, in the year 1800, relative to the alien and sedition laws, and which has since been generally recognized as the true theory of this government.

When speaking of the *powers* delegated by the Constitution to the several departments of this government, Mr. Madison says:

"It has become an axiom in the science of government, that a separation of the legislative, executive, and judical departments is necessary to the preservation of PUBLIC LIBERTY."

"The union of *any* of these powers, and still more of all three in *any one* of these departments, as has been shown to be done by the alien act, MUST CONSEQUENTLY SUBVERT THE CONSTITUTIONAL ORGANIZATION OF THEM."—(See the report in 4th vol. Eliot's Debates, p. 560.)

The *judical powers* conferred upon the President of the United States by the "alien act," and which Mr. Madison was controverting, was that of judging *judicially* what actions of an "alien" should con

stitute a misdemeanor, so as to warrant the Executive in sending him out of the country.

As an analogous parallel of reasoning, we respectfully [redacted] that if the Constitution forbid the President to so far act judiciarly as to determine, upon information given, when and whether certain conduct of a *foreigner* was such as to render his presence in this country inimical to its well-being to such extent as to require him to leave it, how much more a violation of the Constitution must it not be for Congress to so far act judicially as to review the very judgments of the courts when rendered upon matters of legal rights? Is not the latter a much more decided, as well as more dangerous usurpation, or exercise of judicial power than the former? We claim that it is. Especially when we remember that the power granted in the "alien act," but denied by Mr. Madison to the President, was conferred temporarily, at a moment of great national peril—at a time when the emissaries of France were aiming to thwart the policy of Washington as to our neutrality, and to drive us into an alliance against England and the balance of Europe, while the judicial power, which Congress now proposes to exercise, is called forth by no such emergency, nor to save the public or the government from any species of threatened injury, but a deliberate attempt to exercise judicial powers of the highest order, that of reviewing judicially the decisions and acts of the highest judicial tribunals—upon no other ground, and for no other reason, than the abstract technical right to do so. Certainly, if Congress can do the latter act, the President could have done all that he was empowered to do by the "alien" law, and much more, if he chose.

If it be suggested that the mere fact that it devolves upon Congress to appropriate the money to pay the judgment, creates the right to review or act judicially, why may it not be said that inasmuch as it devolves on the *executive* to execute the law after it is passed upon and a judgment given by the judiciary, that *he*, too, may intercept and review the decision of the court? In both cases there is something to be done by one of the other departments after the *courts* have decided. In the one instance, to appropriate by Congress, and pay the judgment rendered; and in the other, (to take the "alien act,") it was for the President to remove the alien after the courts should have decided his conduct was such as to require it. Or, to speak more generally, to execute the decision or decree under any other law. We deny, upon the principles laid down by Mr. Madison, as well as the plain intendments of the Constitution, that the President can exercise any such *revisory* judicial power; and, for the same reasons, and upon the same authority, deny that Congress can judicially review the present, or any other judicial decree or judgment.

And if it had been the uniform practice of Congress to do so, (which we have shown it has not,) such fact would not mend the matter in the least; for, to use the language of Mr. Madison, in the same report, (*Ibid. supra*, 562,) it would be a "MERE PRACTICE WITHOUT RIGHT, and CONTRARY TO THE TRUE THEORY OF THE CONSTITUTION." For we assert that no *usage* or *practice*, nor even *a law passed*, can overcome or supersede the provisions of the Constitution; that none of its provisions can be worn out by neglect or omission, but that the Consti-

tution is a great, vital, and subsisting law, perpetual in power, and irrepealable by Congress or any other tribunal, and may, at any time, be appealed to by any citizen claiming rights under it; and that whatever *it* provides or directs, must be obeyed by every department of this government, any usage or law to the contrary notwithstanding. Such, and such only, is a wholesome and *strict* construction of the Constitution.

Mr. Madison, further discussing this subject, says: "Whenever, therefore, a question arises concerning the *constitutionality* of a particular power, the first question is, whether the power be expressed in the Constitution. If it be, the question is decided. If it be not expressed, the next inquiry must be, whether it is properly and incident to an express power, and *necessary to its execution.* If it be, it may be exercised by Congress. If it be not, Congress CANNOT EXERCISE IT.—(Ibid., 567, 568.

We see no *express* authority for Congress to review this verdict; and certainly it is not "*necessary to its execution*" and payment that it should be reviewed in any way. Besides this, we claim that Congress, or any other tribunal, is forbid to review or "*re-examine*" the facts upon which it was founded, by the *seventh* article of the amendments, as we have before elaborated and attempted to show.

We have caused to be copied from the files of Congress, and had printed the six stated accounts of Reeside's transactions with the Post Office Department, including both his moneyed negotiations and advances, and services performed from the year 1832 to the 31st of December, 1835. It will be seen that, during that period alone, they exceeded the sum of *one million and a half* of dollars. They also exhibit something of the trouble Reeside encountered in obtaining the requisite information from the department, to enable him to accurately state the transactions between them, and which, in some instances, was actually refused. Though it is a matter now put at rest by the adjudication had, it is nevertheless worthy of some moral weight, when you consider the fact that the department holding all the information should have at all denied to him the fullest inspection of all the data in its possession, when, upon those very facts, it was not only seeking to defeat his claim, but actually to bring him in debt to it.

We can very readily perceive and appreciate the arbitrary rule of official power and presumption that might lead to the denying of a citizen a full inspection of the papers and vouchers by which he was to be charged, or his rights withheld; but we must confess we cannot quite so well see the justice or legality of it. And we think the least just effect attributable to such a restriction on the one part should be, to greatly limit the credence to be given to the statements of representations of the other; for we believe it is conceded that officers of government are nothing more than human—are men, *fallible* men—and not always the best specimens of their species; that they are none the less apt to seek an advantage, where there is a contest involving their ministerial act, than they would be in their individual transactions, and should be none the less scrutinized and guarded against.

The fact that they will, and did, seek such advantages is clearly proven in the case before us; for, as we have shown elsewhere, they

forced Reeside to answer their special calls for his information about matter, and then sought to "garble" the same by suppressing those portions of his statement favorable to himself. And it is equally true, that when Reeside called on the department for information, it refused to give it to him unless he would admit of charges and items against himself that were illegal and unjust. On this subject Justice Baldwin gave the officers of government a severe rebuke in his charge to the jury:

"Nothing is more unjust than for the government to withhold credits from an individual, which its own officer has decided and certified to be just and legal, until he should admit charges UNSUPPORTED BY PROOF."—(See the Charge, p. 134.)

We submit whether such an official outrage as this was can leave any doubt as to the spirit of injustice which governed the incumbents of office in their conduct towards Reeside at the time the department was preparing for the prosecution of its suit? And their conduct is rendered the more ungenerous when the fact is noticed, that it was from Reeside's statement of matters which enabled them to at all explain the government's own accounts—a fact which is also shown by the circuit judge, in these words: "A reference to the accounts of the defendant, in connexion with those of the plaintiff, affords much relief in ascertaining the true state of things, by the admission of the defendant of charges against him," &c. (Ibid. 129.) Thus showing he had no hesitancy in admitting what was proper in favor of the government—while the department refused information important to him, unless he would admit what was *unjust*, or yield that which was legally due to him. With these facts so clearly established, this court will certainly look with great caution at anything that was said or done by those who perpetrated such conduct. Such is no more than the legal as well as rational mode of considering facts and transactions between men.

We will here conclude this argument, such as it is—and which we might have done with propriety at a much earlier period—for it has most certainly been extended beyond what was our intention in the beginning. We are aware that we have said much; and, perhaps, much that was unnecessary. But, then, it must be remembered that we have been attempting to discuss questions of the greatest moment—the right of trial by jury; the legal and constitutional rights of the citizen; the duty of the several departments of our government to respect the action of each other upon matters embraced within their respective spheres of action. These, and like questions, are involved in the present case.

In attempting to traverse a field of principles of such vital importance, we have felt deeply impressed with the magnitude and responsibility of the task, and the inadequacy of our ability to do it justice. But one faithful and abiding spirit has cheered us on our journey, and still sustains our confidence in our cause: that is, the invigorating effect of feeling that we are in the right—that justice is with us, and that we are struggling for those eternal principles against official and ministerial oppression.

But in submitting our views we have preferred, whenever we could,

to avail ourself of the great fundamental principles upon which our government is founded, as defined in the precepts and records of the past—at a time when we had no selfish political philosophers pleading for the rights of the people in theory, but actually separating the government from them in practice, by making it so supremely sovereign that they cannot approach, and denying that they have, or can have, any legal rights against it, by placing it beyond the reach of all law, and investing it with an irresponsible sovereign will.

To meet such alarming assumptions of power on the part of those who are honored with office and position under this government, we have endeavored to consult the views of those and their compeers who were the architects of its construction and the sentinels who guarded the integrity of its birth. Hence we have quoted so extensively from the sentiments of those who drafted our Constitution and procured its ratification by their fellow-citizens, and hence also attempted to say so much upon the provisions of that instrument as adopted.

We have, in truth, labored to prove that our government is quite capable of perfecting in *sound practice* that which is so clearly *proposes in theory*—that is, a government capable of doing justice to its citizens and protecting their rights; and that there is nothing in its provisions or organization which authorizes those whose duty it may be to administer it to seek to defeat or embarrass those rights, by assuming technical exemptions and unlimited prerogatives nowhere delegated or specified in any clause or letter of its fundamental law—the Constitution.

In discussing questions so important we have aimed to pervert no precept, or misconstrue any authority or principle, and to deal in facts and example whenever we could do so. We have assumed no position of which, upon mature deliberation, we have any reason to doubt its justice. Our case is not one which requires any torturing of reason and right to sustain it. Such only becomes necessary on the part of the government in resisting it.

It certainly looks strange to see a popular government resisting, with the mere weapons of its assumed sovereignty, the acts of its own judiciary—not upon the ground that the act performed was wrong in merit and justice, but because it had not received a certain sovereign sanction never dreamed of till it was convenient to assume it. There is something so disturbing to every sense of security for our private rights, when our government thus confronts us, that we are at a loss to know what to say or to do for ourselves, or for it.

What has this government to gain by repudiating the verdicts of its juries? And what can it profit by annulling the decisions of its courts? Does it wish to teach its people the sad truth that it has the sovereign power to drag them, at its pleasure, into its courts for purposes of chastisement, and to exact penalties from them, but never for reward?—that they may be stripped of the last farthing of their property by the decisions of its courts and juries when in its favor, but that they can never derive the least benefit from such decisions when in their favor? It is to combat these results and such principles that we have labored in the manner and to the extent we have done.

If there be a day of special sorrow in waiting for this people which

will be more dreadful than another, it will be when our government shall have, by its own example, taught its people to disregard the commands of its judiciary. Soon will it learn that the very step which produces such a result will have severed the last ligament of its own power. Every measure that it clips from the rights of its people is responded to by the loss of two from its own; and, however deep it may degrade *them* by oppression, it will linger still deeper in the depths below.

Seeing no reason why this should be so, but every reason why it should not, with a patriotic regard for our cherished republic, and the policies and wisdom which created it, we hope to see it move forward nobly and untrammelled in its high mission; that the CONSTITUTION, the anchor of *our* safety, and the basis upon which it rests, will be ever preserved in all its purity and administered in all its parts; and that just laws, and not arbitrary will, may govern and protect our rights as a people. Give us in truth and spirit this principle, and one of its chief examples will be to ratify this verdict in favor of Mary Reeside, by giving her a prompt award for the principal sum and interest accrued. She is old—her days are few—she needs it—her children need it. It is hers—it is theirs—and the solemn voice of justice demands it.

JOSEPH B. STEWART,
Of Counsel for Mary Reeside.

Argument for Mary Reeside, executrix, &c., vs. *the United States, upon the acts of* 1825 *and* 1836, *organizing and reorganizing the Post Office Department, &c.; maintaining that the verdict and judgment rendered in favor of James Reeside at the trial in Philadelphia, in December*, 1841, *was authorized and legalized by those acts. By Joseph B. Stewart, esq., of Louisville, Kentucky.*

IN THE UNITED STATES COURT OF CLAIMS.

MARY REESIDE, Executrix,
vs.
THE UNITED STATES.

Argument upon the acts of 1825 *and* 1836, *organizing and re-organizing, and providing for the settlement of the accounts of the Post-Office Department.*

Since the preparation of the printed arguments we have submitted in this cause, a very important view touching the legal and statutory provision on this subject has presented itself to our mind, which we think is so conclusive of the issue involved as to merit a specific notice, and presentation to this honorable court. These considerations arise chiefly under the several statutes creating, organizing and regulating the Post Office Department, and the duties and powers conferred upon the Postmaster General.

On the temporary establishment of the Post Office Department, the Postmaster General was subject to "the direction of the President in performing the duties of his office, in making contracts for the transportation of the mails." But in 1810 there was established a General Post Office, "under the direction of a Postmaster General." (See 2d vol. Stat., p. 592.) This act made that officer no longer subordinate to the President, otherwise than by the power of removal.

This organization of the department remained till 1825, when an act was passed repealing all former laws, and declaring "that there shall be established at the seat of government of the United States a General Post Office, under the direction of a Postmaster General;" and then proceeded in the same language of the act of 1810, which it expressly repealed, to restate the organization of the "General Post Office" which it then created.—(See the act, 4th vol. Stat., p. 102.)

The effect of the act of 1810—and as repealed and substituted by the act of 1825—was to place the Post Office Department on a distinct footing, separate from and independent of the other branches of the government, except removal of the Postmaster General by the President, and subject, of course, to such legislation as Congress might deem it proper to enact.

Under both the acts of 1810 and 1825, the Postmaster General was authorized to institute all suits for money or debts of any species due the department, in his own name. If he did not sue, no suit could be brought. "In relation to the accounts of individuals, deputies or contractors, he was the Auditor, Comptroller and Register of the Treasury of his department, which had no connexion with treasury accounts, for paying over the people's revenue when there was any. His assistants and clerks kept the accounts; he settled them, certified balances under his official seal, and, so certified, they were admissible evidence in all suits brought by him. That he was the sole arbiter of the accounts is evident from his having the exclusive power to bring suits for debts and balances due the department. The suits must be in his own name and carried on under his direction; of consequence he was the sole judge of whether a balance was due or a suit should be brought or prosecuted. If *he* did not sue, the account could not be verified by judicial power; and if he did sue and obtain judgment in a civil action, he might discharge the defendant from imprisonment if he had no property. Standing in this position, the Postmaster General had the same power over the accounts of his department, (except his own account with the United States,) as the secretary and the accounting officers of the other departments possessed by the union of all their powers, *without any* control by the President."—(See charge to the jury, page 93.)

The above language of the court, in its charge to the jury in the trial of this cause, is scarcely anything more than a recital of the 31st section of the act of 1825, which alleges: "That all suits which shall be hereinafter commenced, for the recovery of debts or balances due to the General Post Office, whether they appear by bond or obligations made in the name of the existing or any preceding Postmaster General, *or otherwise*, shall be instituted in the name of the 'Postmaster General of the United States:' That certified statements, under the seal of

the General Post Office, of the accounts of the several postmasters and contractors, after the same shall have been examined and adjusted at the office, shall be admitted as evidence in all suits brought by the Postmaster General for the recovery of balances or debts due from the postmasters or contractors," &c., &c.—(See 4th vol. Stat., page 112.)

The Postmaster General being thus solely authorized to sue, no other person or department could do so, for any cause of action arising from the transactions connected with his department. Hence, if he did not sue, no suit could be brought, nor could the judiciary be employed to try and determine matters of difference between the Post Office Department and those engaged in its service.

Congress by the same act, in addition to conferring this exclusive power on the Postmaster General, also vested him with a peculiar privilege in the trial of the causes upon which he might choose to sue, by enabling him to force a trial at the next ensuing term of the court, except in the cases of two *provisos* made in favor of the defendant—thus:

SEC. 38. *And be it further enacted*, That in all suits arising under this act, the court shall proceed to trial, and render judgment the first term after such suit shall be commenced: *Provided, always*, That whenever service of the process shall not have been made twenty days at least previous to the return-day of such term, the defendant shall be entitled to one continuance—if the court, on the statement of such defendant, shall judge it expedient: *Provided, also*, That if the defendant in such suits shall make affidavit that he has *a claim* against the General Post Office, not allowed by the Postmaster General, although submitted to him conformable to the regulations of the post office; and shall specify such claim in the affidavit, and that he could not be prepared for the trial at such term *for the want of evidence*—the court in such case, being satisfied in those respects, may grant a continuance until the next succeeding term," &c.—(See 4th vol. Statutes, suprà, page 113.)

Notice particularly the phraseology of the *second proviso:* "that if *the defendant in such suits shall make affidavit that he has a* CLAIM *against the General Post Office*," &c.; thus clearly recognizing the right of "the defendant" to plead any claim he might have "against the General Post Office"—not a part of it only, but the whole of it—and upon which "the court shall proceed to trial, and give judgment," &c. No restrictions are made by the language of the statute, and none can be made by the tribunal which may try the cause; for it is an authoritative as well as a just and rational rule for the construction of all statutes regulating private as well as public rights, that they shall be so construed as to obtain the substantial ends of justice; and where the language of the law itself does not positively limit the extent of the right or the jurisdiction of the tribunal, courts of justice have ever made it a rule to carry the construction co-extensive with the ends of justice; and what is more consistent with enlightened justice, that where there is a suit brought between two parties to determine disputed matters of account, that the *defendant* should have a right fully equal with the *plaintiff* to derive an equal benefit from the trial and adjudication had, to the full extent of any rights he may have when he is thus

forced to encounter and bear the burden of the suit, whether he prefers it or not. Certainly no intelligent or honest mind will offer to deny that such *is justice.*

We see, then, by the act of 1825, that the Postmaster General had the exclusive control of all suits for causes of action arising with parties connected with his department; and that it was the privilege of the defendant, if he had "*a claim,*" to set it up and plead it as an offset; and that such was the law, and the rights of the parties under that law. We will now proceed to see how far the provisions of that law were altered, or the rights of parties affected, by the act of 1836, under the 17th section of which this suit against James Reeside was brought.

And as preliminary thereto, let us advert to the facts which preceded and led to the passage of the last-named act. It is manifested and established by the clearest proof in this case, which marks every feature in it, that the expenses and necessary outlays in transporting the mail between the passage of the acts of 1825 and 1836 wholly and entirely exceeded the income or revenues of the department. The rapid increase of population in the whole country, particularly in the western and southwestern States, with a corresponding growth of trade and commerce, created by the products of the soil, demanded a corresponding increase of postal facilities. Added to this, we learn from history and the attitude of political parties, that politics had commenced being *a trade* in earnest, which spread broadcast in the land an immense mass of political documents, gotten up and circulated under the extended franking privileges of members of Congress for electioneering and party purposes, thus throwing upon the Post Office Department an immense increase of matter to be transported by mail, without a corresponding increase of facilities or means for the purpose; every politician seeking the promotion of his party, and through it the promotion of his individual interest, without making any move or taking any steps to supply the department with the necessary means or moneyed appropriation to defray the expense—but left it to shift for itself. To send documents was popular: to appropriate money to pay for it was not. Politicians had no trouble in deciding that matter; they were willing to, and did, *frank* all they could to every quarter of the land, but refused to vote a farthing, in the way of a loan or otherwise, to pay for these arrogated facilities of self-promotion.—(On this point see the charge to jury, pages 115, 116.)

By this increase of burden, with no increase of revenue or means, the department became deeper and deeper involved. It had no credit; nor could it get anything discounted, except at the most usurious rates, having to pay as much as *two per cent.* a month. It was compelled to resort to individual endorsements; and in this emergency applied to James Reeside, who, as elsewhere stated, was the largest contractor in the country, most extensively known, and had the best credit. His name would get money most anywhere, when the department on its own credit could not get it at all. It was in debt to all its contractors of any note; to some largely—Reeside and Stockton and Stokes in particular. The contractors, in consequence of the unlimited *franking* by politicians, added to the more natural and necessary causes of increase

of mail matter, were all performing double, and some of them most quadruple, the amount of service their contracts stipulated for; therefore, they had to be provided for, for such labor, under the head of extra service. This created a larger and larger balance-sheet in their favor. The department could not pay; hence the contractors, to accommodate the department, and hoping for a better state of things, only drew such sums as were indispensable to carry forward their business, and left the remainder due them for the use of the department as an accommodation. In this way was swelled up the 162,000 and odd dollars awarded by the Solicitor of the Treasury to Stockton and Stokes; and not being able to meet the drafts and acceptances negotiated for its use, which Reeside, the endorser, was compelled to meet and honor, created the large balance established by the verdict in his favor.

But prior to either of these results taking place, and pending the worst embarrassments of the department, the outside politicians, wishing to grasp the reins of government, being advised of the mode in which the department was compelled to act and pursue, in order to carry on its operations, raised all sorts of charges against the Postmaster General, and, with a view of injuring the existing administration, resorted to every species of means to do so. To effect this end, there were procured by *partizan* means the committees of investigation in Congress of 1834–'5; the result of which is known to the world, and amounted to no more than showing that the Postmaster General had been doing all he could to transport the mail, with all its increased matter, with no increased, but wholly insufficient means.—(See on this subject the language of the Solicitor of the Treasury in his report, Doc. No. 52, 1st sess., 25th Cong., 1837.)

These operations, however, brought to light to Congress something of the real condition of the Post Office Department, in a way that they were compelled to notice it, and superinduced the passage of the act of 1836, of which we shall speak presently.

The act of 1825 repealed all former laws regulating the Post Office Department, and rested the future organization of the post office on that one act. It so proclaimed in its title, "*An act to reduce into one the several acts establishing and regulating the Post Office Department.*" And, besides this declared purpose in the title, the concluding section (the 46th) expressly repeals all former laws, except as therein provided. But the act of 1836 did not propose wholly to repeal the act of 1825. The former act was passed when the department was in extreme embarrassment, and the latter seemed wholly inadequate for its wholesome operation. The act of 1836 was, therefore, designed to aid the act of 1825, and give a more efficient organization to the Post Office Department, and at the same time to provide a better mode for settling the distracted accounts of the department by requiring suits, &c., to be brought. This is apparent in the very title of the act itself, which reads thus:

"*An act to change the organization of the Post Office Department, and to provide more effectually for the settlement of the accounts thereof.*" (See 5 vol. Stat., page 80.)

Let it be distinctly borne in mind that this act was passed with a full knowledge of the heavy demands supposed to be unliquidated on

the books of the department, for we see that a private act was passed for the benefit of Stockton, Stokes, &c., on the same day that the general law was passed, and which conferred upon the Solicitor of the Treasury the duty of adjusting those gentlemen's accounts, amounting to some 162,000 dollars and upwards, which Amos Kendall was endeavoring to repudiate, and to bring them in debt to the department. Clearly, then, the act of 1836 must have meant what it proposed—"*to change the organization of the Post Office Department*, AND TO PROVIDE MORE EFFECTUALLY FOR THE SETTLEMENT OF THE ACCOUNTS THEREOF." By this act of 1836 some limits and checks were put upon the scope of unlimited power over the department, which vested in the Postmaster General from 1810 till 1836—a period of twenty-six years. That department was now provided with an auditor, who shared some of the duties and powers formerly vested in the Postmaster General. Hence we see the 8th section of the act provides, "that there shall be appointed by the President, with the consent of the Senate, an Auditor of the Treasury for the Post Office Department, whose duty it shall be to receive all accounts arising in the said department, or relative thereto, to audit and settle the same, and certify their balances to the Postmaster General."—(See 5th vol. Stat., page 81.)

The 10th section of this act (see supra, pages 81, 82) further enlarges and defines the duties and powers of the auditor.

The 13th section (see supra, page 82) alters for the future the manner and the style of executing contracts and instituting suits; and now, for the first time in the history of the government, directs that contracts and suits shall be with and in the name of the United States. Hence the language of this section: "That the bonds and contracts of postmasters, mail contractors, and other agents of the Post Office Department, *shall hereafter be made to and with the United States of America;* and all suits to be commenced for the recovery of debts or balances due by postmasters and others, or upon bonds or contracts made to or with the present or any former Postmaster General, or for fines, or penalties, or forfeitures, imposed by the laws respecting the Post Office Department, or by the Postmaster General, pursuant thereto, *shall be instituted in the name of the United States of America: Provided*, That actions and suits which may have been instituted in the name of the Postmaster General previous to the passage of this act shall not be affected by the provisions of this action."

This 13th section of the act of 1836, it will be distinctly perceived, is amendatory of, and supersedes, the 31st section of the act of 1825. It alters the style in which suits shall be brought, but does not alter, nor propose to alter, the *rights* or *remedies* of parties whose rights shall have been created or shall have attached to the citizen under the latter act, but only directed that "all suits to be commenced for the recovery of debts or balances," &c., "shall be instituted in the name of the United States." It was quite competent for Congress to divest the Postmaster General of the exclusive privilege of bringing suits in his own name, and to require them for the future to be conducted in the name of the United States; but it was not in the scope of the legislative power to alter, to the prejudice of the party, or lessen any rights which any citizen, contracting with the Postmaster General, may have acquired

against that functionary, under the existing law, by virtue of which such contracts were made, which of course, carried with them all legal, rights and remedies not prohibited or denied by the letter of the law which authorized their execution.

Now let us look carefully at what was the *law*, the *rights*, and the *remedies*, which were created by the act of 1825, and then we shall be ready to apply the law of 1836, free from any necessary doubt whatever.

The 31st section of the act of 1825 vested in the Postmaster General the sole and exclusive right and power to sue in any case "*for the recovery of debts or balances due to the General Post Office, whether by bond or obligation, made in the name of the existing or any preceding Postmaster General*, OR OTHERWISE.—(See vol. 4th, page 112, suprà.)

The powers and duties conferred in this 31st section are but the consequences of the absolute power conferred upon him by the 1st section. "He shall establish post offices, and appoint postmasters, at such places as shall appear to him expedient," &c., and "he shall provide for the carriage of the mail on all post roads that are, or may be, established by law, and as often as he, having regard to the productiveness thereof, and other circumstances, shall think proper," &c.—(See page 102, suprà.)

Combining these powers, the contract for carrying the mail was with the Postmaster General, and not with the United States. The suit, if any brought, was instituted in his own name, and not in the name of the United States; and, as before shown, if *he* did not sue no suit could be brought. It follows, then, that suits brought by the Postmaster General were upon a totally different footing from suits brought by the other departments of the government, and were not subject to the same regulations. When the Postmaster General sued, he appeared in his individual official capacity, and brought with him into court no more rights or immunities than any other individual plaintiff, except such as were specifically pointed out by the law creating his office. The defendant could plead against him as an individual, and take judgment upon a just ground of offset, in the same manner. By the 38th section, as we have seen, the Postmaster General could enforce trial at the first term, except in case of the *two provisos;* and the second of those *provisos*, we have seen, fully recognizes the right of the defendant to plead "*a claim*," if he had one against the General Post Office, which had been presented and rejected. There is no limit named, but "*a claim*," which clearly shows that no limit was meant, other than the rational requirement that it should be a demand properly arising under some contract or transaction with the "General Post Office." Deducting from these premises, we claim that the fact is clear that, had the suit been brought under the act of 1825, the right on the part of Reeside to plead and prove his whole claim would have been as legally authorized by statute, by the character of the plaintiff, as it would have been rational and just.

Now, let us come back to the act of 1836, which we have seen does not repeal the act of 1825, except so far as it supersedes it by the enactment of a new law; and that one of the proclaimed purposes set forth

in the title of the law of 1836, was "*to provide more effectually the settlement of the accounts*" of the Post Office Department.

We have seen that by this act an auditor was appointed who shared some of the powers previously vested in the Postmaster General.—(See sections 8 and 10, 5 vol. Stat., pp. 81–'2. And that by the 13th section (same act) the contracts and suits were to be in the name of the United States.

The 14th section provides, "that the Auditor of the Post Office Department shall superintend the collection of all debts due to the department, and all penalties and forfeitures imposed on postmasters for failing to make returns, or pay over the proceeds of their offices; he shall direct suits and legal proceedings, and take all such measures as may be authorized by law to enforce the prompt payment of moneys due to the department."

We perceive in this section no limitations of any rights vesting in any parties under the act of 1825; save on the part of the government, they are put under the supervision of the Auditor, instead of the Postmaster General. Now let us examine the next section.

SEC. 15. *And be it further enacted*, That copies of the quarterly returns of postmasters, and of any papers pertaining to the accounts of the office of the Auditor for the Post Office Department, certified by him under his seal of office, shall be admitted as evidence in the courts of the United States; and in every case of delinquency of any postmaster or contractor, in which suit may be brought, the said Auditor shall forward to the attorney of the United States certified copies of all papers in his office tending to sustain the claim; and in every such case a statement of the account, certified as aforesaid, shall be admitted as evidence; and the court trying the cause shall be thereupon authorized to give judgment and award execution, subject to the provisions of the thirty-eighth section of the act to reduce into one the several acts establishing and regulating the Post Office Department, approved March the third, eighteen hundred and twenty-five. No claim for a credit shall be allowed upon the trial but such as shall have been presented to the said Auditor, and by him disallowed in whole or in part. Unless it shall be proved to the satisfaction of the court that the defendant is at the time of trial in possession of vouchers not before in his power to procure, and that he was prohibited from exhibiting to the said Auditor a claim for such credit," &c.

Here, then, we have the rights and remedies of the defendant, under the 38th section of the act of 1825, interlinked with and made part of the 15th section of the act of 1836; and carried further, inasmuch as it provides for the defendant to plead at the trial claims for credit not presented to the Auditor, or rejected by that officer. It is true, the word "*credit*" is used instead of "*a claim*," as in the act of 1825, but cannot in law, reason, or justice, affect the rights of the defendant, for every demand of just offset is a credit, and none the less so because it may exceed the demand sued on; and when the object of the suit is to determine the difference upon the whole demand and offset pleaded, it would be absurd to say that the adjudication which would settle the one should not also conclude the other. But, then, if there could be any doubts in other cases, arising subsequent to the law of 1836, it

cannot be so in this, because the whole of the rights and liabilities *pro* and *con.* between the Post Office Department and James Reeside, arose under the unqualified existence of the law of 1825. It was under the last-named law that he made his contracts with the Postmaster General, and not with the United States. It was under the same law that he labored like a galley slave in transporting the mail; it was under the same law that he gave the department credit by the use of his name—that he negotiated money for its use when it could get it from no other source—that he clung to it desperate fortunes and sinking credit, and advanced money from his own private means to honor its protested drafts. It was under this law that James Reeside in his excess of confidence in the ultimate disenthralment of the Post Office Department, and the honesty and integrity of its chief incumbent and executive head, involved and lost his private fortune, and died penniless after a fair and legal triumph, with a verdict of a jury and judgment of a United States court in his favor. His rights, then, attached under the law of 1825, and all remedies which he was entitled to under that law were irrevocably his, and beyond the reach of subsequent legislation to limit or abridge them by any fetters which legislative ingenuity might or could create. Congress might create for him a better remedy, but could not lessen the one he had, by altering the letter of the law under which the same originated.

We therefore claim that no restriction which could be argued from the law of 1836 however applicable and conclusive to any subsequent case can inure back and limit any rights on the part of James Reeside which vested in him by virtue of the law of 1825. And that all claims and equities which he could have plead under this last-named law, upon a suit brought by the Postmaster General in his own name, he had the same right to claim, plead, and receive under the action brought against him, as it was by the United States by virtue of a subsequent law, or the act of 1836. Any action of this kind brought against Reeside under the act of 1825, would not have been a suit brought against him by the United States, as we have before stated, but a suit by the Postmaster General, and all rights and remedies which attached to him under the existence of that law were beyond the reach of the legislature to take from him, by substituting a remedy less efficient or more difficult to reach. Such, we maintain, *is enlightened law and reason.*

As a fact conclusive upon the point that a suit by the Postmaster General, under the act of 1825, was not a suit by the United States, why was it deemed necessary to pass an act changing the style of suits from the name of the Postmaster General to that of the United States? Evidently for no other reason than that the government meant to change its policy as to post office suits, and had resolved to take them under the direct charge of the United States, upon principles similar to those upon which other suits were conducted, which affected the national revenue; and that such change of the style of such suits was indispensable to enable it to do so. Furthermore, when we see that the Postmaster General could alone discharge a party from imprisonment, against whom a civil judgment was obtained, fixes his separate and individual character and responsibility so different from the other

heads of departments that it would seem like presumptuous cavil to argue otherwise.

But the suit against Reeside was institnted under a little different special authority and regulation to any we have yet considered; and though, under the act of 1836, it was by virtue of a specific section and feature of that law, which was clearly enacted with a view to cases then supposed to exist, as from its very language and nature it could not have application to any other description of cases; we allude to the 17th section of the act of 1836, which reads thus:

"SEC. 17. *And be it further enacted*, That in all cases where any sum or sums of money have been paid out of the Post Office Department to any individual or individuals, under pretence that service has been performed therefor, when in fact such service has not been performed, or by way of additional allowances for increased pay, actually rendered, when the additional allowance exceeds the sum which, by the provisions of law, might rightfully have been allowed therefor; and in all other cases where the moneys of the department have been paid over to any person, in consequence of fraudulent representations, or by mistake, collusion, or misconduct of any officer or clerk of the department, it shall be the duty of the Postmaster General to cause suit to be brought, in the name of the United States of America, to recover back the same, or the excess, as the case may be, with interest thereon."—(See 5th vol. Stat., page 83.)

The judicial mind cannot escape the conviction that this 17th section is a most remarkable clause to be inserted in any law, or to be passed by any enlightened legislature. It does not propose, in any of its provisions, to operate upon or apply to any future case, but refers entirely to past transactions of the Post Office Department. It is, in truth, nothing more nor less than a general statutory search warrant issued by the legislative body in favor of Amos Kendall, by virtue of which he was commissioned to overhaul and review the actions of his predecessors and those whom they had employed, without limit, in quest of *fraud*, and of which fraud he (Amos Kendall) was to be the sole judge, so far as the right to state an account against any party and bringing suit was concerned. The party to be sued would know nothing of it; his business with the department may have been wound up, leaving no reason to suppose that anything remained unclosed, until this vigilant functionary (the Postmaster General) should have clandestinely restated such accounts in a mode to suit himself, and gave the unsuspecting citizen notice thereof by serving him with process to answer a suit. We do say, therefore, that this 17th section is a strange, very strange, law.

It is perfectly well known that this whole law of 1836 was drafted by Amos Kendall, or under his immediate supervision. Mr. Barry resigned his place as Postmaster General in the spring of 1835, after the committees of Congress to inquire into the management of the General Post Office had ceased their labor, and Amos Kendall was appointed his successor. The embarassed condition of the department was then notorious to the world. Mr. Kendall had resolved upon his plan to retrieve its condition, which was afterwards fully disclosed by his acts in his repeated endeavors to revise and annul the acts of his

predecessors, and wipe out the large balances due the contractors who had served the department upon credit during the period of its bankruptcy, and by such arbitrary proceeding to relieve it from those heavy debts.

The claim of Stockton & Stokes, for 160,000 and odd dollars, was then pressing upon him, and by this system of annulling and re-charging, Mr. Kendall had brought those parties in debt to the department, and they were moving before Congress for relief. And James Reeside's contract having expired, he, too, was preparing for a settlement, claiming some $275,000 in his favor. Mr. Kendall desired further legislation to enable him to carry out his proposed system of settling the accounts of the department; and a change in the organization of the department being deemed requisite, it was effected by the passage of the law of 1836. But in the passage of that law it would be natural as well as necessary that the Postmaster General should be allowed and desired to suggest its details and provisions.

Remembering, then, that Mr. Kendall had already, and before the passage of this law, indicated his favorite purpose of re-charging the contractors (see case of Stockton & Stokes) in sums sufficient to overcome the balances claimed by them, it is but natural he should desire something in the shape of positive law to sustain his proceeding. By the law of 1825, and under which those debts were created, he had no such authority. Hence can be readily explained the inserting of the 17th section of the law of 1836, which gave him such sweeping power to carry on the crusade against the acts of predecessors, which he had embarked in, even before the passage of that law.

It will be seen by a reference to the combined effect of the 8th, 10th, 14th, 15th and 18th sections of the act of 1836, that in all other cases than those stated in the 17th section, it was the Auditor then created who was to have charge of and to direct when suits should be brought; and we see by the 16th section that "the attorneys of the United States in the prosecution of suits for moneys due on acccount of the Post Office Department shall obey the directions which may from time to time be given to them by the Auditor of the Post Office Department." But those "*ex post facto*" proceedings for *supposed* over-payments and illegal payments, "in consequence of fraudulent representations, or by mistake, collusion or misconduct of any officers or clerk of the department," it specially reserved to Mr. Kendall to take charge of them. And in order to relieve himself of the odiousness and responsibility of a choice in the premises, he caused it to be prescribed as an imperative duty in the letter of the act; for "it shall be the DUTY of the Postmaster General to cause suit to be brought" in all such cases.

Now we have arrived at the precise point, and legal authority for instituting the suit which was brought by Mr. Kendall, "in the name of the United States," against James Reeside. It was instituted by the express requirements of the "*ex post facto*" provisions of the 17th section of the act of 1836. At the time of the passage of this law in 1836, as we have stated, Reeside was pressing for a statement and settlement of his accounts, claiming a balance in his favor of some $275,000. Mr. Kendall, as well as Congress, was aware of this fact. The department, however, took its own time to state the accounts of Reeside,

in which it did not arrive at a conclusion until September, 1839, and by the same, or a similar process of re-charging and annulling which had been applied to Stockton & Stokes, succeeded in bringing Reeside in debt to the department in the sum of $32,709 62.

Here, then, was one of the demands expressly provided for in the 17th section. The charges against Reeside embraced nearly all the causes of action set forth and provided for in that section of the act, and which made it positively obligatory upon the Postmaster General to bring the suit. It therefore follows, that the suit brought against James Reeside by the Postmaster General, in September, 1839, was, by express statuatory authority, derived under the 17th section of the act of 1836.

We submit, then, whether that action, thus expressly required to be brought by statute, does not stand upon a very different footing from an ordinary suit brought by the United States for the recovery of a supposed balance due them? And when a suit is thus, by special statute, enforced upon a citizen, can there exist any power to deny to him a full and equal benefit from the adjudication had, co-equal with the United States, provided he obtains a judgment? Must not a suit brought by the government, under any express statute directing the same, against a citizen with a view of settling his accounts with the Post Office Department, carry with it a corresponding right, on the part of the citizen, to prove, upon offset pleaded, the whole of such disputed account, and to take a judgment in his favor, provided he is entitled to one from the facts and justice of his cause? Is not such the legitimate, as well as the rational and just purport and meaning of such a statute and suit? Or if any limit is to be applied, must not such restriction appear upon the face of the law? If none appears, then is it competent for any tribunal hearing such cause to imply any limit?

The clear and avowed object of this 17th section was to authorize Mr. Kendall to review the transactions of W. T. Barry, as Postmaster General; and where such matters should be found as did not coincide with Mr. Kendall's views, he had it charged to some one under the heads of fraud, collusion, or mistake, stated in this peculiar section. Mr. Kendall was made sole judge of those matters, so far as the bringing of suit was concerned. The decision and action of his predecessor had no weight with him; they were either the result of fraud or collusion, as he (Mr. Kendall) might choose to decide. Proceeding upon this principle, and shielded by the act from all responsibility, he found "*fraud*," "*collusion*," and "*misconduct*" enough in the transactions of William T. Barry with James Reeside, for having paid or received money—or tantamount to the same, for having given and received credits—"under pretence that service had been performed therefor, when, in fact, such service has (had) not been performed, or by way of additional allowance for increase service actually rendered, when the additional allowance exceeds (exceeded) the sum which, by law, might rightfully have been paid therefor;" or (to annul the large amount of drafts and acceptances which Reeside, and Gouverneur, and others had negotiated) "in all other cases where the moneys of the department have been paid over to any person in consequence of

fraudulent representation or by mistake," (this word to cover his own act in making the deposit with the Bank of the Metropolis,) "collusion, or misconduct of any officer or clerk of the department," &c. Pursuing this line of inquest and revision, Mr. Kendall being sole judge, he found sufficient of these misdeeds and errors in the acts of his predecessor, Mr. Barry, to overcome the whole of Reeside's demand of $275,000, and to bring him in debt to the department in the sum of $32,709 62, as before stated.

Having arrived at this result, and so stated Reeside's account, the next, and imperative duty of Mr. Kendall, under the 17th section of the law of 1836, the object of which was, as stated in its title, "to provide more effectually for the settlement of the accounts" of the Post Office Department, was to bring suit; he could not escape nor delay it after having so stated Reeside's accounts as to bring him in debt to the department; he was bound to and did sue, in order to settle that account.

Then we again submit, whether Reeside had not the unqualified right, legal, equitable and moral, to plead and prove his side of the account, too? Could the express object of the law have been effected and carried out by any other means? Would there have been a "settlement of the accounts thereof," as designed by the title of the act, if the court and jury had not inquired into the whole accounts as submitted to their investigation and decision? Certainly not. Why, then, attempt to cramp the fair and only just and equitable interpretation of the law, by saying that it only meant that the government should inquire into its side of the account? The letter of the law does not say so. It speaks of the "accounts" of the Post Office Department; not one side of them merely. If such was, or could be, the proper meaning of the act of 1836, Reeside should have been so informed. He could not understand such to be the case from any letter or sentence of the law. The government took no such grounds at the time of trial. It gave Reeside no notice of such secret operation or meaning of the law. He was required to plead to the government's demand; and did so, by pleading as an offset his full demand for moneys advanced and services performed, amounting to some $275,000. The government, under the management of the Postmaster General, who knew well the character and extent of Reeside's demand, joined issue, and went to trial upon the issue thus joined; and we have seen, in another view of the case, what extraordinary means were resorted to on the part of the government to sustain its demands. How then is it possible, with the literal interpretation and meaning of the act of 1836 before our eyes, to contend for a moment that Reeside should be denied the right to a full hearing upon the issue joined, and a verdict or judgment in his favor, if by the evidence he was entitled to one? The theory or legal construction which can overcome this just and irresistible conclusion, would quite as effectually obliterate any species of adjudication which could be created by, or emanate from, human tribunals.

Let us look, too, as we proceed, at the species of oath imposed by the law upon the jury who were commissioned to try and determine the issue between the United States and Reeside. By refering to that

oath, it will be seen that the jury were solemnly enjoined to determine the whole issue, and not a part of it. The United States, uniformly adopt the form of oath in the empannelling of jurors, prescribed by the State laws. The oath, therefore, administered to the jury in the trial of this cause, was in these words: *You and each of you do swear (or affirm) that you will well and truly try the issue joined between the United States, plaintiff, and James Reeside, defendant, and a true verdict give according to the evidence, unless dismissed by the court, or the cause be withdrawn by the parties,*" &c.—(See Purdon's Digest, Penn. Laws, page 472.)

With such an oath as this imposed upon the jury, to try an issue joined, as that was, between the United States and Reeside, and they not being dismissed by the court, nor the cause withdrawn by the parties, but, on the contrary, the proof on both sides being carried to the utmost extent, and the government having the last say in it, (see notes of trial, page 85,) how is it possible that the jury should do otherwise than render a full verdict, as they were sworn to do, upon the whole issues and evidence submitted in the cause? We deny that any reason can be assigned, which is legal or just, or that any answer can be given, unless in the language of the despot and tyrant, our government shall be permitted to say, that it don't choose to respect the verdict, though it fully participated in its creation. We shall be slow to believe that such response will ever meet the sanction of this or any other American court.

There is another fact also to be observed in construing this 17th section of the act of 1836. It will be observed, by referring to the language of this section, that it not only has reference to past transactions, but that each enumerated cause of action therein specified carries with it the presupposition of some species of fraud or moral delinquency in the defendant; either that he had obtained money from the department under false pretences—had drawn more for extra service than the law allowed; or else had obtained money by some fraudulent collusion with some "officer" or "clerk of the department." These, or some one of them, must furnish the cause of action before suit could be brought.

The party or parties defendant must be deemed by the Postmaster General guilty of some one or more of these moral, if not criminal, offences, which pre-judgment on the part of that functionary was avowed by his stating an account against the supposed delinquent defendant, and arraigning him before a United States court to answer a demand composed of these peculiar items of charge. To such direct charges of cheats and peculations upon the treasury of the Post Office Department, by obtaining money from it, "in consequence of fraudulent representations," or by "collusions or misconduct of" or with some "officer or clerk of the department," the defendant was compelled to plead and join issue, and defend his good name and character from aspersion the best way he could. The shame and infamy was all upon him. If he was found in default, he was damned; for he would be stigmatized with obtaining money from the Post Office Department "IN CONSEQUNNCE OF FRAUDULENT REPRESENTATIONS." But if the reverse should appear, that the citizen defendant was not in de-

fault, his sovereign plaintiff, the United States, stood beyond the reach of responsibility or censure. No action for damages could be had, or or other personal redress reached.

We submit, then, in view of such unequal attitude, power, and responsibility of the parties, if the least legal, equitable, and rational effect which can be given to this law of 1836, when proceeding under its 17th section, must not be to permit the harrassed and persecuted defendant to plead, prove, and justify his transactions with, and demands upon, the Post Office Department upon his offset pleaded, and to receive the full benefit of any and whatever verdict and judgment may be rendered in his favor, if the jury upon the facts, and the court upon the law, shall have thought him entitled to one? We earnestly insist that such is the only authoritative, as well as just and rational, interpretation of the act of 1836, and that it is a statutory authorization of the verdict in this cause.

As auxiliary to the conclusion thus arrived at, we invite attention to the special act passed for the relief of Stockton & Stokes on the same day this general act of 1836 was passed, and which rescued from the hands of Mr. Kendall the power of treating those parties to the same ordeal to which he subjected Reeside. This special act conferred upon Mr. Virgil Maxcy, then the Solicitor of the Treasury, the duty of settling the accounts of Stockton & Stokes in obedience to justice and equity.—(See the act, 6 vol. Stat., pp. 665–6.)

The amount claimed by both Stockton & Stokes and Reeside was well known to both Congress and the department. Stockton & Stokes had met with their curtailment, and were resisting it by an appeal to Congress. The Solicitor of the Treasury, who was made the arbiter between the Post Office Department and those petitioners, after mature deliberation and thorough investigation, allowed as legal, equitable and just, the entire claim alleged by Stockton & Stokes, amounting to $161,563 89. This special law was passed to dispose of one of the accounts of the Post Office Department, which was then being pressed for settlement. And the general law passed on the same day, was designed "to provide more effectually for the settlement of the" remainder of the "accounts thereof," (the Post Office Department.)

With an object so manifestly in view, was it not competent for a court and jury, acting under the 17th section of the general law, to proceed to the same extent, and render quite as effectual relief, as the Solicitor was sustained in doing when acting under the special law for a similar object.

Such were the views entertained by the United States judges who tried the suit against Reeside, as expressly stated in their charge to the jury, to whose language we will respectfully refer in support of our views on this subject.—(See charge to the jury, pages 118, '19, '20, and '21.)

There was also some additional provision to any we have yet noticed, for the settlement of the accounts of the Post Office Department, by the act of 1836, which is to be found in the 18th section, which provides, "That the Auditors for the Post Office Department shall adjust and settle all balances due from postmasters, on account

of transactions prior to the first day of July, eighteen hundred and thirty-six. He shall, when necessary, institute suits for the same, and cause them to be effectually prosecuted to judgment and execution; and where cases at law for these or any other balances that are or may become due on account of the Post Office Department, have been, or shall be fruitless, may direct the institution of suits in chancery, to set aside fraudulent conveyances or trusts, or attach debts due to the defendants, or obtain any other proper exercise of the powers of equity, to have satisfaction of the said judgments; and the courts of the United States sitting in chancery shall have jurisdiction to entertain all such bills, and make such decrees and orders thereupon as may be consonant to the principles and usages of equity."—(See 5th vol. Stat., page 83.)

And by referring back to the 16th section, defining duties of the United States attorneys when proceeding under this law, it will be seen that it was "the duty of each of said attorneys, immediately after the end of every term in which any of the suits aforesaid shall have been pending, to forward to the said Auditor a statement of all the judgments, orders and steps which have been made or taken in the same during the said term, accompanied by a certificate of the clerk, showing the parties to, and amount of each judgment, with such other information as may be required by the said auditor."—(See *Ibid*, 83.)

Several important considerations are properly deducible from these two last named sections. One is, that the Postmaster General was only authorized to bring those *retroactive* suits provided for in the 17th section; and that so soon as he should obtain judgment, they then passed over to the control of the Auditor, thus showing the peculiar and special character of those suits. But another and more important effect of those clauses is to show that Congress was, in reality, aiming to provide effectual means for the settlement of the accounts of the Post Office Department, and meant to carry the law to the full extent of all necessary remedies for that purpose; and doubtless meant, that the suits and proceedings thus expressly authorized and required should be full and complete upon all matters contested. Such, too, was doubtless the understanding of the Auditor and the United States attorneys, in the trial of the cause against Reeside, and after the rendition of the verdict in his favor. For we see by the correspondence of the Auditor, Mr. Whittlesey, with the committee in Congress, after the motion for a new trial was overruled and Reeside had petitioned Congress for the payment of the verdict, where he says he "had received a report a few days previous from the district attorney upon the subject of post office suits generally, stating that this case (Reeside's) had been carried up to the Supreme Court," &c.—(See amended petition, page 2.)

This action on the part of the Auditor, directing the course to be pursued by the district attorney, and the acknowledged information received by the former from the latter, show conclusively that both those functionaries understood the object of the suit and proceedings against James Reeside was to settle his account and dealings with the Post Office Department, and that it was to be as conclusive and bind-

ing on the department as upon Reeside, and that they were proceeding in obedience to the requirements, respectively, of the 16th and 18th sections of the law under which they were acting, to further test the verdict before the Supreme Court, upon error to be assigned: which purpose the Auditor and United States attorney do not seem to have abandoned, even up to the dismissal of the case by the Supreme Court, because of the failure of the United States to prosecute their appeal.

Considering, then, the provisions and nature of the act of 1825, establishing the Post Office Department, and the act of 1836, changing its organization, &c., we arrive at the following important conclusions:

1st. That the act of 1825 placed the whole Post Office Department under the exclusive control of the Postmaster General, whose actions in the legitimate discharge of his duty were subject to the supervision of no other department, power, or tribunal.

2d. That, among the plenary powers conferred by that act on the Postmaster General, was the exclusive power to appoint postmasters and make contracts for carrying the mail; all of which bonds and contracts with postmasters and contractors, when so taken and executed, were done in the name of the Postmaster General, and *not* in the name of the United States.

3d. That the Postmaster General had the sole and exclusive power to sue for all causes of action connected with the Post Office Department; and that such suits had to be instituted in his own name, and not in the name of the United States, which were not parties to the action.

4th. That when suit was brought by the Postmaster General, the defendant had the right to plead, as an offset, and prove any claim or claims he might have against the General Post Office, without limit as to amount; and to take a judgment against the Postmaster General upon the same, if the evidence entitled him to one.

5th. That whatever *rights* and *remedies* attached to and vested in James Reeside, by virtue of the law of 1825, under the existence of which the whole of his transactions with the Post Office Department, and contracts and dealings with the Postmaster General, were perfected and executed, could not be, and were not, diminished by any "*ex post facto*" operation of the law of 1836; but that he retained the same *rights* and *remedies*, as defendant to a suit brought under the latter law in the name of the United States, as if brought under the former law in the name of the Postmaster General, with whom alone he had conducted his dealings and transactions—the legal consequences of which could not be altered to his prejudice by a subsequent law.

6th. The act of 1836, entitled "*An act to change the organization of the Post Office Department, and to provide more effectually for the settlement of the accounts thereof,*" does not repeal the law of 1825, any further than it supersedes it by new and distinct provisions; and the plan for the settlement of the accounts which it proposes, is no more than a change of mode as to the person who shall sue, and the name and style of the plaintiffs—the conduct of suits generally to be by the Auditor, and in the name of the United States, instead of in the name of the Postmaster General.

7th. That the 17th section of the act of 1836 still reserved to the Postmaster General the right to bring a certain class of suits therein indicated, when, in *his judgment*, a right or cause of action existed—and which section left him no option; but his duty to bring suit was a positive statutory requirement, for the purpose, as stated in the title of the act, of settling the accounts of such defendants with the Post Office Department.

8th. That the suit brought by the Postmaster General against James Reeside, in September, 1839, was brought under and by virtue of the positive requirements of the 17th section of the act of 1836, and was brought for the purpose of settling his accounts with the Post Office Department, and was, therefore, a suit specially authorized by statute; and the verdict of the jury and judgment of the court is strictly conformable to, and authorized and legalized by, the very intendment and object of the special statute under which it was instituted, and which required it to be brought.

9th. We submit, as a just and authoritative construction of the law of 1836, and especially its 17th section, which required and directed the institution of the suit against James Reeside, for the settlement of his accounts, and the coercing of a penalty if he had been found in default, that said law and special section carried with it the corresponding right on the part of Reeside to plead, as offset, his whole claim, which was well known to the Postmaster General, and to take a verdict and judgment upon the same, if, by the evidence, he was entitled to one? And we submit, further, whether such legal interpretation and deduction from and of the act of 1836, is not well and fully sustained by the act of the Postmaster General when said suit was brought and offset pleaded, in joining issue upon the same to the full extent as pleaded, and laboring by proof, for five weeks, to invalidate and annul the offset and demand so pleaded by Reeside? Does not such proceedings, in view of the object as expressed, and circumstances which attended the enactment of the law of 1836, and the motion of the United States subsequent to the verdict and judgment, first for a new trial, and then suing out a writ of error, give a validity to the verdict and judgment, both by statutory authority and right, and the overt acts of ratification and recognition of the legality of the same, which cannot be overcome by any plea or objection to the jurisdiction of the court, after all these proceedings thus authoritatively were had?

10th. We submit whether it is not an authoritative and sound interpretation of any law or statute directing a suit or suits to be brought for the settlement of any disputed accounts or matters of demand, where the government is a party, if, as a necessary result, it does not contemplate that the party or parties sued shall also be heard as to any demands pertaining to said accounts which they may hold against the government? Could there otherwise be any settlement of the accounts; and if any limit could be applied, must it not be expressly stated in the letter of the law requiring such suits to be brought? And there being no such limit in any part of the law of 1836, and especially in the 17th section, which made it obligatory on the Postmaster General to sue Reeside, for reasons before stated, does it not of itself give a

special statutory sanction and legality to the verdict rendered in his favor? We claim that it does.

11th. It has been repeatedly held by the courts of the United States, and was so reiterated by the Supreme Court, in the case of "Kendall *vs.* the United States," that "it is a sound principle, that in every well organized government the judicial power should be co-extensive with the legislative, so far at least as private rights are to be enforced by judicial proceedings."—(12 Peters, 619.) We submit, then, how the courts could apply a remedy co-extensive with the object and enactment of the legislature in the protection of private rights, when adjudicating under the law of 1836, unless their verdict and judgment, if in favor of the defendant, be as valid and conclusive as if in favor of the United States? Must we not presume that it was the intention of Congress to do justice to Reeside, when it directed him to be sued, as it did by the 17th section of the act of 1836; and if so, how could he receive or obtain justice from the proceedings, if he were denied the right to plead and prove his account, and derive the full benefit of the verdict and judgment which was rendered in his favor?

We claim, then, as a consequence of the acts of 1825 and 1836, organizing and reorganizing the Post Office Department, and directing suits to be brought, that the suit against Reeside was strictly authorized, and the verdict of the jury and judgment of the court in his favor thereby positively legalized; which, under the 7th article of the amendment to the Constitution of the United States, cannot be re-examined as to matters of fact; and the United States having failed to impeach the same upon any errors of law, leaves the verdict and judgment of the circuit court unimpeached and irreversable, and therefore must be paid, both principal and interest, as a matter of legal and equitable right.

Respectfully submitted by

JOSEPH B. STEWART,
Of Counsel for Mary Reeside.

Argument of Richard S. Coxe, in the Court of Claims, in conclusion and reply to M. Blair, esq., solicitor, in the case of Mary Reeside, executrix, vs. *United States.*

May it please the court: The facts and circumstances connected with this case have been fully presented in the papers on your files and in the arguments of my associates. It has been long pending. It underwent a full investigation in the circuit court in Philadelphia in the autumn of 1841, where the trial consumed more than six weeks of unintermitted labor, before as intelligent and honest a jury as ever was empannelled, before a court of great experience, profound learning, and of unquestioned integrity. In one form or another it has been before Congress for thirteen years. It has awakened a deep and widely extended interest in the minds of the community and in the profession, and for one I can say, that in no one instance have I met

with an intelligent and honest citizen who had given any attention to its merits, or a single lawyer, who has ever expressed a doubt as to the justice and equity of the claim to its fullest extent. Such is the case now submitted for adjudication before a court whose jurisdiction is not restricted within any of the technical rules, or by any of what are sometimes regarded as the niceties by which the ordinary tribunals of justice are occasionally fettered.

This case, thus exhibited, has been met here as elsewhere by what seems to me the most subtle and purely technical objections, the force and validity of which it is devolved on me to examine. Such, then, is the substantial object and purport of this argument, which, though it may be thought somewhat discursive, will, it is hoped, be found to contain little if anything which has not a real bearing upon the merits of the case, or does not meet fairly and fully the objections presented by the solicitor.

Perhaps few cases have ever been presented to a tribunal of justice for its decision which have involved a greater variety of questions, both of law and fact, than this case has during its progress for more than a quarter of a century exhibited. These questions have been as important as they were numerous; and the ultimate decision of such a controversy will involve consequences of the most serious character, as well to the citizens whose interests are at stake, as to the government, their great and powerful antagonist. It embraced many hundreds of items on either side, extending through a period of several years; many of these items resting upon their own individual merits and circumstances, variant in their character, and perplexing and complicated in their details.

The antagonistic claims of the contending parties, as they were first exhibited, it was found could not be adjusted to their mutual satisfaction, and a suit was instituted for the purpose of bringing these contending claims to a final adjustment; an action was brought in the circuit court of the United States for the eastern district of Pennsylvania, and came on for trial at the October term, 1841.

Almost every item of charge and counter-charge involved a distinct issue; testimony was adduced to sustain or to rebut each; every point of law was zealously argued; more than six weeks were consumed in the trial; the charge of the court alone occupied two days; and the jury were engaged in their room for several more days, with all their notes of the evidence, &c., before they agreed on their verdict. After the most mature deliberation the jury agreed upon a verdict for more than $200,000 in favor of the defendant, as the balance actually due from the United States to James Reeside. Subsequently, and before returning this verdict to the court, yielding to the doubts of one of their number, they reduced this amount, and, as finally rendered, they certified the balance in favor of Reeside to be $188,496 06.

A motion was made to the court to grant a new trial on various grounds, and twelve separate reasons were filed in support of this application. The defendant was not entirely satisfied with the verdict, and proffered his consent to have a re-trial, on the condition that the United States should pay the entire costs and defray the expenses, which his impaired and almost exhausted resources did not enable him

to meet. This proposition not being acceded to, the motion to set aside the verdict was argued and finally overruled by the court, and judgment ordered to be rendered on the verdict.

An inspection of the papers filed in the case will exhibit most of these facts, and will also show that the judgment, being adverse to the United States, did not give to defendant any costs in the case; even the expenses of his witnesses, numerous as they were, and many brought from a great distance and detained throughout the trial, were all defrayed by him without remuneration. This heavy load was cast upon a man, in a suit brought against the citizen, who is proved by the record and the testimony to have had justly due to him nearly $200,000.

Nor was this all. Many important questions of law were raised during the trial, and exceptions noted to the rulings of the court. A writ of error was sued out. Congress was informed officially of this fact, and it was urged that this furnished a sufficient ground why no action should be had upon Reeside's petition for relief. No bill of exceptions, however, was ever prepared; the writ of error was never prosecuted, and, on that ground, was finally dismissed by the Supreme Court.

The judgment of the circuit court thus became final and conclusive between the parties. Nearly fifteen years have elapsed. Reiterated applications have been made by Reeside during the brief remainder of a life embittered and shortened by this controversy, and by his widow and family after his death, for relief. They could not exercise that amount of political influence which could ensure attention to the case, and it remains unpaid.

This court furnishes an opportunity for being once more heard before a judicial tribunal. It is the last resort of the petitioner; and even its judgment may prove to be as unavailing as that already rendered by a court of the same government, where law and justice were administered by judges of unimpeached integrity and of distinguished ability, aided by a jury in the investigation of controverted facts and contradictory testimony. The court say in overruling the motion for a new trial: "It cannot be expected that a better or more impartial jury could be selected; there certainly cannot be one more patient or attentive than they were; a case of great difficulty and complexity was before them; they examined it deliberately, and agreed on a result, which cannot be attributed to passion, prejudice, or any improper bias."—(*Notes of Trials, &c.*, p. 162.)

What is to be the course and extent of investigation before this high tribunal, it is not our province to determine; it is scarcely within our capacity to conjecture. Looking to the Constitution and long established law of the land, it has appeared to us, that in regard to all questions of law adjudged in the circuit court, the only appellate jurisdiction resides in the Supreme Court. To that court the United States had the right and the power to appeal, to re-examine the judgments pronounced on the trial in its different stages, and to reverse them if found erroneous. Such appeal was taken, and abandoned; and as we apprehend, those rulings are now to be regarded every where—throughout this country and throughout the world,

wherever they may arise, as the final and conclusive judgments of a court of competent jurisdiction—binding upon all parties here or elsewhere, now or hereafter. This court has not been invested by law with the power to entertain appeals from such judgments. It is not to be supposed for a moment that it will claim or exercise this power of revisal or reversal. In regard to the questions of fact arising in the case, it would seem that the provisions of the Constitution are not less explicit and significant. In suits at common law, all questions of fact are to be referred to and decided by a jury. Whatever may be the objections practically or theoretically urged against this practice; however ingenious in invention or plausible in application, such is the undoubted and unquestioned and unquestionable law of this land. It may have its defects, so have all human institutions; but I neither know nor acknowledge any power or authority under our institutions, to abolish the right of trial by jury, or to re-examine the facts which by their verdict juries have established. These points, thus incidentally adverted to, will be more particularly noticed in a subsequent part of this argument.

If right in this view of the subject, the case, as now presented, is divested of many of the characteristic features which it bore anterior to the institution of the suit in Philadelphia, and when that suit was tried.

James Reeside had been for many years connected in various ways with the Post Office Department. This connexion, which began with his being a contractor for the transportation of the mail, became extended more widely. The department became embarrassed in its pecuniary affairs. Immense additional duties were imposed upon it by Congress directly acting in its legislative capacity, and by members of the executive and legislative departments, in the exercise of their franking privileges; while no additional means were appropriated to meet these new and extraordinary necessities. Nevertheless, by the first section of the act of March 3, 1835, (4 Statutes, 102,) among the various powers confided to the Postmaster General, and the many duties imposed upon him, it is required of him that "he shall provide for the carriage of the mail on all post roads that are or may be established by law"—"and that he shall pay all expenses which may arise in conducting the post office and in the conveyance of the mail." The routes ordered by Congress must then be supplied with mail facilities; papers, franked by those who enjoyed the privilege, must be carried. How were the necessary funds to be procured?

It was under these circumstances that Reeside, who enjoyed beyond any man in the employ of the department the confidence of the government and of the community, was called upon to aid in meeting this emergency. The crisis was severe; it demanded an immediate remedy; it was unprecedented; no precise legislative provision had therefore been made for it; the difficulties were daily increasing in amount, and extending in their width. All demanded a prudent, a large and expanded remedy. For such an emergency he was eminently qualified. Enjoying the confidence of the government, great powers were reposed in him; standing equally high in the estimation of the community, he was enabled to employ those powers with effect.

Possessed himself of large resources, his name gave credit to those with whom he was required to operate. Known north and south, east and west, his influence and his operations were widely diffused. It was about this time he acquired the title by which he was generally known, that of the Land Admiral.

It was required of him—that he should perform large additional service beyond what the letter of his contracts embraced; that he should defer pressing upon the office for the pay which became due him for regular and extra service; that he should, in lieu of money, receive acceptances of his own drafts; and finding that such paper might, through his aid and credit, be made available, he was called upon to negotiate in various places, and to an enormous amount, similar paper in order to obtain the necessary funds to enable the department to perform the multifarious duties required of it. These multifarious calls upon Reeside, always promptly responded to, to the utmost extent that his own resources, as well of money as of credit, extended, necessarily involved great complexity in the accounts between him and the department. Much of what was done was, of equal necessity, not only irregular and unprecedented in the ordinary operations of the department, but was strictly confidential in its character. It could hardly be that such operations should be exposed to the public eye, for party politics, never more highly inflamed, might seek to impugn the integrity of both parties; the announcement of them would defeat the very objects designed to be accomplished; and by involving the credit of Reeside in the same difficulties and doubts which then rested upon the department, and which threatened to involve it in such extremities as to suspend, if not to stop, its operations throughout the Union, lead to the greatest calamities and disgrace, as well as the extreme of individual loss and suffering.

Reeside was unable to obtain a settlement of his accounts. In 1835 a new monarch ascended the throne, "who knew not Joseph." A spirit of reform, real or factitious, had gone forth; doubts, honest or imaginary, were aroused. All the acts of the department, ordinary and extraordinary, were subjected to a searching, and I may be permitted to add, not a fair and liberal, candid, or impartial, examination, and the unfortunate Reeside, instead of finding himself lauded for his great and patriotic services, and remunerated for his labors and sacrifices, found himself branded as a public defaulter—as a coadjutor and accomplice in the most unjustifiable and unwarrantable, if not fraudulent, schemes to rob the public.

Such is a brief and imperfect view of the difficulties which lay in the way of this unfortunate individual, and the obstacles which obstructed him in his efforts to have his accounts fairly adjusted. Even after the rendition of the verdict and judgment, despairing of any other remedy, he, and after his death his family, over and over again, applied to Congress for relief. More than fourteen years have passed in these unsuccessful efforts.

It is obvious that it is now impracticable to re-try the case upon its original merits. At the time when it was before the circuit court in Philadelphia, much important evidence could not even then be obtained. Many witnesses were then dead. Many documents, which

might have thrown light upon the case, had perished in the conflagration of the post office. The loss of these papers has not and cannot be supplied. Both the learned judges who presided at the trial are no more. Many of the witnesses then examined cannot now be summoned to the stand—they are beyond the reach of the process of any earthly tribunal. Independently of this insuperable difficulty in point of fact, where is to be found a tribunal vested with authority to sit as an appellate tribunal, to revise the decisions made by the circuit court on the law of the case? Under the Constitution and law, that appellate jurisdiction belonged exclusively to the Supreme Court. The United States took the initiative step in bringing this authority into exercise. It stopped short at this first step, and the writ of error was dismissed, and the judgment of the circuit court became final. From it there can be now no appeal.

Equally clear is it, that there can be no re-examination of any fact found by the jury. Under the express provision of the Constitution, this is now prohibited. These points will be again adverted to, in a subsequent part of this argument, in another connexion.

As, then, there can be no reversal of the decision of the circuit court for any real or supposed errors in law, and no re-examination of the facts found by the jury, the original dimensions of the controversy are much diminished, and the issues between the parties essentially changed. It is no longer in the power of either party to produce living witnesses to establish the credits they respectively claimed, or to rebut those presented by the opponent. These witnesses are, for the most part—as has been stated in the petition—dead. The original written documents connected with these transactions, have, to a great extent, perished during the long period of years which has intervened since they occurred. There exists no tribunal of justice which can constitutionally revise the judgment of the circuit court upon the various points of law which were presented. There is no judicial power to re-examine and annul the findings of the jury upon the facts. The entire controversy, as it existed in October, 1841, and anterior to that time, has passed *in rem judicatum*.

The claimants produced and exhibit before a court of the United States a record of what purports to be a final judgment rendered by another court of the United States of equal dignity and authority, as the present foundation of their demand; and they contend upon general principles, and especially under the special circumstances of the case, that this is competent and conclusive evidence to establish their right. This is the general proposition advanced by the one party and controverted by the other. The United States contend that this judgment is not entitled to the weight claimed for it, and indeed, is not competent evidence to establish the proposition for which it is invoked.

Before proceeding to discuss this important question in detail, I must be permitted to offer some preliminary observations, which, if I have not misapprehended their weight, are entitled to the serious consideration of this court.

The suit in the circuit court was instituted by the United States, by the ordinary process, commanding the defendant to appear and answer.

It has long since been settled, that no act of Congress is necessary to authorize the government to bring actions at common law for the recovery of money due it, or property withheld.—(United States *vs.* Barker, 1 Paine, 157.) Such suits may be brought in the federal or State courts. This action was brought in 1839, and when the trial came on an account was filed, certified by the auditor of the post office, on the 22d September, 1841, and which, on its face, includes items for the first time charged against the defendant within that same month, to the extent of more than $14,000. These debits, consequently, bear date two years after the commencement of the suit. As the object of the defendant was to bring this controversy to a close, and it was supposed to be equally the wish of both parties finally to adjust all matters in difference, no objection was interposed to the introduction of new items of charge even at that stage of the case.

According to the account thus presented, the items on the debit side amounted to $513,067 08, while credits were allowed to Reeside of $465,991 46, leaving a balance of $47,072 62. It is observable that none of these credits appear to have been applied to any specific charges; on one side and on the other they are general—the first item on the debit side dated April, 1832; the last, 14th September, 1841. The action being a general one of assumpsit, it was incumbent on the plaintiff to establish affirmatively the items of charge; and as no credit which had been given could be withdrawn, before a verdict could be rendered for plaintiff the charges must be shown to exceed those credits.

Under the plea of non-assumpsit, defendant was at liberty to controvert every item of charge, and affirmatively to show additional credits, to the full extent of annihilating any balance which, upon an investigation of the account presented by the government, the various items of charge which it contains, and the evidence adduced to sustain them, might still appear to be due from defendant. No law of set-off is required for this purpose to accomplish this result. Such law is required only beyond this line. This will be made to appear more fully hereafter.

For the present, it is only necessary to draw the attention of the court to the fact, the importance of which will appear in every stage of the present controversy, that in addition to the plea of non-assumpsit, which covered all the ground I have alluded to, the defendant interposed a further plea of set-off, claiming further credits which had been presented to the department and disallowed by it. These credits, if fully allowed, would have not merely annihilated all which the United States ever pretended to claim, but would have established a balance in favor of defendant to the extent of at least $250,000. It is not my present purpose to examine into the right of defendant to interpose such a plea, or the consequences and effects of it; those are matters which will be more appropriately discussed in a subsequent part of this argument. My present object is simply to present distinctly to the court the facts upon which the legal argument is to arise. Such a plea, accompanied with minute statements of accounts, was presented and filed. No objection was or could be interposed to its reception. It was in the strictest conformity with the various

of transactions prior to the first day of July, eighteen hundred and thirty-six. He shall, when necessary, institute suits for the same, and cause them to be effectually prosecuted to judgment and execution; and where cases at law for these or any other balances that are or may become due on account of the Post Office Department, have been, or shall be fruitless, may direct the institution of suits in chancery, to set aside fraudulent conveyances or trusts, or attach debts due to the defendants, or obtain any other proper exercise of the powers of equity, to have satisfaction of the said judgments; and the courts of the United States sitting in chancery shall have jurisdiction to entertain all such bills, and make such decrees and orders thereupon as may be consonant to the principles and usages of equity."—(See 5th vol. Stat., page 83.)

And by referring back to the 16th section, defining duties of the United States attorneys when proceeding under this law, it will be seen that it was "the duty of each of said attorneys, immediately after the end of every term in which any of the suits aforesaid shall have been pending, to forward to the said Auditor a statement of all the judgments, orders and steps which have been made or taken in the same during the said term, accompanied by a certificate of the clerk, showing the parties to, and amount of each judgment, with such other information as may be required by the said auditor."—(See *Ibid*, 83.)

Several important considerations are properly deducible from these two last named sections. One is, that the Postmaster General was only authorized to bring those *retroactive* suits provided for in the 17th section; and that so soon as he should obtain judgment, they then passed over to the control of the Auditor, thus showing the peculiar and special character of those suits. But another and more important effect of those clauses is to show that Congress was, in reality, aiming to provide effectual means for the settlement of the accounts of the Post Office Department, and meant to carry the law to the full extent of all necessary remedies for that purpose; and doubtless meant, that the suits and proceedings thus expressly authorized and required should be full and complete upon all matters contested. Such, too, was doubtless the understanding of the Auditor and the United States attorneys, in the trial of the cause against Reeside, and after the rendition of the verdict in his favor. For we see by the correspondence of the Auditor, Mr. Whittlesey, with the committee in Congress, after the motion for a new trial was overruled and Reeside had petitioned Congress for the payment of the verdict, where he says he "had received a report a few days previous from the district attorney upon the subject of post office suits generally, stating that this case (Reeside's) had been carried up to the Supreme Court," &c.—(See amended petition, page 2.)

This action on the part of the Auditor, directing the course to be pursued by the district attorney, and the acknowledged information received by the former from the latter, show conclusively that both those functionaries understood the object of the suit and proceedings against James Reeside was to settle his account and dealings with the Post Office Department, and that it was to be as conclusive and bind-

ing on the department as upon Reeside, and that they were proceeding in obedience to the requirements, respectively, of the 16th and 18th sections of the law under which they were acting, to further test the verdict before the Supreme Court, upon error to be assigned: which purpose the Auditor and United States attorney do not seem to have abandoned, even up to the dismissal of the case by the Supreme Court, because of the failure of the United States to prosecute their appeal.

Considering, then, the provisions and nature of the act of 1825, establishing the Post Office Department, and the act of 1836, changing its organization, &c., we arrive at the following important conclusions:

1st. That the act of 1825 placed the whole Post Office Department under the exclusive control of the Postmaster General, whose actions in the legitimate discharge of his duty were subject to the supervision of no other department, power, or tribunal.

2d. That, among the plenary powers conferred by that act on the Postmaster General, was the exclusive power to appoint postmasters and make contracts for carrying the mail; all of which bonds and contracts with postmasters and contractors, when so taken and executed, were done in the name of the Postmaster General, and *not* in the name of the United States.

3d. That the Postmaster General had the sole and exclusive power to sue for all causes of action connected with the Post Office Department; and that such suits had to be instituted in his own name, and not in the name of the United States, which were not parties to the action.

4th. That when suit was brought by the Postmaster General, the defendant had the right to plead, as an offset, and prove any claim or claims he might have against the General Post Office, without limit as to amount; and to take a judgment against the Postmaster General upon the same, if the evidence entitled him to one.

5th. That whatever *rights* and *remedies* attached to and vested in James Reeside, by virtue of the law of 1825, under the existence of which the whole of his transactions with the Post Office Department, and contracts and dealings with the Postmaster General, were perfected and executed, could not be, and were not, diminished by any "*ex post facto*" operation of the law of 1836; but that he retained the same *rights* and *remedies*, as defendant to a suit brought under the latter law in the name of the United States, as if brought under the former law in the name of the Postmaster General, with whom alone he had conducted his dealings and transactions—the legal consequences of which could not be altered to his prejudice by a subsequent law.

6th. The act of 1836, entitled "*An act to change the organization of the Post Office Department, and to provide more effectually for the settlement of the accounts thereof,*" does not repeal the law of 1825, any further than it supersedes it by new and distinct provisions; and the plan for the settlement of the accounts which it proposes, is no more than a change of mode as to the person who shall sue, and the name and style of the plaintiffs—the conduct of suits generally to be by the Auditor, and in the name of the United States, instead of in the name of the Postmaster General.

trial appeared to the court to exhibit the claims of the United States under these distinct heads:

1. Over-payments on contracts for carrying mails.
2. Fines imposed for failures under these contracts.
3. Extra allowances for extra services charged to have been improperly made by the former head of the department, such as for mail guards, &c., which the contractor should himself have paid.
4. Allowances made on these contracts after the service had been discontinued.
5. Payments made by department, by drafts drawn by and on the department, which were properly chargeable to Reeside.

Taking either aspect of the case, that presented by the department in its official statement of the account, and on which, upon transactions extending through several years, and embracing items both of debit and credit to so large an amount, pretending to claim a balance proportionately so inconsiderable, or in the aspect presented by the court classifying the various grounds of charge, it does seem, at first blush, the most singular case ever exhibited against a defendant in a court of justice as the ground upon which a verdict and judgment are sought to be obtained.

With but a few and comparatively small number of items of charge, at present, with the lights now afforded me, each and every of these items of claim involves the head of the department or other high officials in the deepest criminality, in the most direct and palpable violation of all law, all duty to the public, all personal honor and integrity. Who was that head of the department? William T. Barry. It is not incumbent upon me in the discharge of my present professional duty to vindicate that gentleman, now deceased, from the stigma thrown upon him. Personally, I never knew him, and I cannot say that I ever saw him or had any communication of any sort with him. My associations in politics have for years been few, and such as they were, they never brought me into connection or collision with Mr. Barry; but I can well recollect that during the high political excitements of the times, whatever errors of judgment were attributed to him as a man not familiar with the details of business, no imputations from any high sources were cast upon his honor and integrity; and some of those who differed from him politically rendered him full justice on that score. See particularly the concluding paragraph in Maxcy's report on the case of Stockton & Stokes. I can also well remember that when he left the Post Office Department in 1835, he received from the Executive the appointment of minister to Spain, and that he died abroad while holding that station.

If accusations involving his personal character have been since and are now preferred, they emanate from those who were instrumental in placing him in offices of great importance, involving heavy responsibilities, and requiring, in the trying exigencies of the day, a strictness of official duty and attention to the details of a complicated business, for which his previous habits had not sufficiently qualified him.

Let us see, then, who and to what extent are implicated in these allegations and charges now urged against Reeside:

1. Overpayment on contracts for carrying the mail. It is not con-

troverted, nor can it be, that the Postmaster General had the absolute control over the contracts for the transportation of the mail, he himself being alone responsible for the faithful performance of his duties.—(*See notes, &c.*, 111.)

The law of the land for many years has interdicted advances to contractors of every kind. They are to receive their pay under their contracts and according to its terms; but the public money cannot be paid until the service is performed. The Postmaster General, until the act of 1836, occupied a position and incurred responsibilities known in no other department of our government. The public money came into his hands, was expended at his discretion; no supervising authority could control his contracts or his expenditures, so far as other parties were concerned. The accounts with the treasury were between it and himself. He was responsible for the money he received; he was to discharge himself by showing that it had been lawfully expended. Such was the law until July, 1836, the year after Mr. Barry had left the department, and Reeside's connexion with it terminated.

If, then, he had made or authorized payments to contractors beyond the prices stipulated for, he was the party immediately responsible to the United States. Such payments would be illegal, and he was justly and legally chargeable with them. Yet while the illegality was in this case insisted on, we have no evidence that the credits claimed on account of these disbursements by Barry were ever questioned or disallowed. Reeside is charged with what, it is alleged, Barry illegally paid to him, and is sued on behalf of the government for a recovery of this money; while there is no pretence that the man, who is thus charged with the unlawful disposition of the public money in direct contravention of law, if the charge be true, has not been allowed to escape harmless. The official delinquent, as this charge implies, goes unscathed; the innocent recipient of money which he could not claim until it was earned—and that it was earned the account presented does not pretend to raise a doubt—is alone held responsible to a party with whom he never had direct business transactions, but all the intercourse with whom was through its secret agent, whose acts were never controverted by the principal, whose authority was never questioned by that principal, and who that principal seeks to make, passing over his agent, immediately responsible to him.

As to the items of charge against Reeside, consisting of allowances made to him for extra services beyond those specially provided for in the original contracts, what has been already said is equally applicable to this class. Such claims were exclusively within the power of the Postmaster General. He had by law the right to contract for extra services—to stipulate for the payment of them when rendered—to discontinue such services when they were no longer required for the benefit of the public, and to restore them when the public exigencies demanded. Subject to the general control of the laws, his action on these matters was absolute. If he transcended his lawful authority in the payment of the public money entrusted to him, he was responsible to the government, his principal, for malversation in office. There was no connexion, no privity, between the contractor and the

government. If he was indebted to the department, it was the Postmaster General alone who could judge that such was the case; it was he alone who could direct suit to be brought, or control its action when brought. Such were the provisions of the law during the time when Reeside was in connexion with the department. How far this law is to bear upon and govern the present case, it is for this court to decide.

Precisely and under the same category stands the class of fines. If they had been legally incurred under the contracts, such fines were to be imposed and exacted.

Unfortunately, there is nothing in the account filed which shows whether the fines now charged arose from failures to perform contracts admitted to be valid, or under the contracts for extra services, which we think the department had a right to provide for, but which seem to be, in mass, denounced as iniquitous. We respectfully submit, that the Postmaster General had lawful authority to make such additional contracts for services which the exigencies of the country at the time required, to impose fines for breaches of those contracts upon those who were guilty of failures, subjecting them to penalties, and to charge such fines up, before further payments were made. No payment of money from the department could, therefore, lawfully be made while fines legally imposed remained unpaid. Yet as early as June, 1832, nine years before this case was tried, we find ourselves charged with fines; in 1834, other charges of a similar character. Now, if these fines were actually imposed for delinquencies actually incurred, every payment of money for services rendered was illegal without a deduction of these debits.

The same remarks may be made, as to the payment for services which the contractor was himself, under his contracts, bound to provide for—as, for instance, mail-guards.

The charge for payment of services for carrying the mail over routes which had been discontinued, stands upon much the same footing. If, in fact, and under the terms of the contracts lawfully discontinued, no question can arise as to the right and duty of the Postmaster General to stop the payment upon them. But it must be borne in mind, that every such payment ought legitimately to enter into the accounts between the Postmaster General and the treasury. If he claims credit for such payments, and they are allowed to him, there is an end of the matter. No power exists on the part of the government to charge them to the contractor. If the Postmaster General has not thus charged them, or if such charges have been disallowed in his account, then the claim is against him on the books of the treasury. If you look, you will look in vain, therefore, for any evidence, or even allegation, upon which to substantiate this class of claims as proper charges in any account between the United States and James Reeside. The last in this classification which I shall here notice, is the payment of money by the department, on checks or drafts drawn by Reeside on other parties, or on the department, and accepted by it, and payments made to persons by the department and now charged to Reeside.

Look at these items as charged in the account rendered. By whom

were these numerous checks drawn, upon whom, upon what pretence charged to Reeside? So with the drafts, by whom drawn, upon whom; what connexion had Reeside or the department with them? So in the charges of payments made to W. J. Watson in the year 1836, amounting to more than $14,000. Where is the shadow of rightful claim? If paid to that gentleman by the department, on what ground do the accounts exhibited justify the payment? Where is the authority pretended to charge such payments to Reeside? If properly paid on his account, and chargeable to him, could this be lawfully done if the department did not then owe him that amount of money? Where are the accounts between the Postmaster General and the government? If these items are charged by and credited to Barry, then there can be no pretence that they are again chargeable to Reeside. If not credited to Barry, then they constitute items of charge against him, as for so much money unlawfully paid by him. There is, however, this one sweeping objection to each and every one of these items of debit. There is, it is believed, no one item of credit given to him which appears to have been claimed or given for any one of them.*

The accounts between the Postmaster General and the treasury have never yet been exhibited to our inspection. If he is allowed these payments, then it is clear the government cannot charge us with them. If he has never claimed credit from the government for them, how can the goverment claim credit from us? If he has presented them and they have been disallowed him, it may in like manner be asked, are we answerable? If he has paid us money in accordance with law, he is entitled to charge the government in his account with such payment. If has paid us in contravention of law, he is not allowed credit for it, and ought to be held the debtor of the United States to that amount. The remedy is then a personal one on his part against us; and it would puzzle, I will not say, to use an old expression, a New Jersey lawyer, for I belong to that fraternity, and candidly avow myself unequal to meet the emergency, but a Kentucky or a Missouri lawyer, unless the latter should have travelled westward of the line of the old State, to say how such items of claim could be established against us.

If I am correct in this view of the case, the question with regard to the liability of the United States to an original suit does not arise; nor does even the other and very different one, whether a party, sued by the government, may not plead and prove offsets to an amount far exceeding the claim exhibited against him.

I have not, inadverently or insignificantly, used the language, that this case presents various and important questions. It is by no means necessary, in our view of it, that all should be decided. The necessity, and even propriety, of any decision upon some of them, will depend upon the adjudication which may be made of other and preliminary points.

As now presented—and it has always been so presented—the United States, in an action brought by it against Reeside, exhibts an account

* For a more particular examination of these charges, see, among the papers filed, the argument of R. S. Coxe before the select committee of the House of Representatives, in April, 1844.

which, on its face, shows admitted credits to the extent of $465,996 46. These credits, either in mass or in detail, cannot be controverted; they are removed from the field of controversy. Payments have been made, services rendered equivalent to that sum. No one item of the credits which form this aggregate can be, or have been, questioned. These principles were fully discussed and conclusively adjudged by the Supreme Court in two cases, reported in 8 Peters, *United States* vs. *Jones, administrator, &c.*, page 375 and page 387—see particularly pages 382–'3. In the first case, in which the opinion of the court was delivered by Mr. Justice McLean, (page 383,) the precise point is presented and decided. "The second bill of exceptions was taken to the instruction of the court, that the defendant was entitled to the credits given him in the treasury account; and that, in claiming those credits, he did not waive any objection to the items on the debit side of the account. On the part of the government, it is contended that this instruction is erroneous," &c. "There can be no doubt that if the defendant be called upon to render an account on which the plaintiff seeks to charge him, the account cannot be garbled, but must be taken entire. And so, where a plaintiff renders an account, at the instance of the defendant, to be used in his defence, the account thus rendered is considered as the admission of the party, and its parts cannot be separated. But the treasury account does not seem to rest on the same principle. The accounting officers of the treasury act on the accounts, and give to the credits, as entered, their official sanction. The vouchers of an individual are all submitted to these officers, and their decision has always been considered as conclusive upon the government, but not so as against the individual. The law expressly provides that rejected items may be allowed by the court." Again, page 384: "In the present case, the government, to sustain its action against the defendant, give in evidence a treasury account, duly certified. This account, as far as it represents the official action of the treasury, is made evidence by law; but it contains items of debits, which, unsupported by other evidence, are not proved by the transcrip. Now, must these items be admitted by defendant, if he claim the credits which have been allowed him in the same account? The credits have been duly examined and sanctioned, and the law makes them evidence for the defendant as well as the plaintiffs; but the items objected to, though charged in the same account, are not thereby made evidence, and without further evidence they must be rejected by the court. Would not the rule be as novel as unjust, which should require the defendant, in a case like this, to admit debits against him, unsupported by proof, if he claims credit in the same account, properly entered and legally proved?" Again, page 385: "Could anything be more unjust than for the government to withhold from an individual credits which its own officers had decided and certified to be just and legal, until he should admit certain charges made against him, but which are unsupported by evidence? On what must the defendant rely to establish his credits in this case? The transcript of the treasury? His vouchers are in the treasury, and, having been allowed, must remain on file, and he can only ask the accounting officers for the evidence of this allowance. Had his

vouchers been rejected, he might have obtained them from the department,* and submitted them to the jury which tried his cause in the circuit court. And may the evidence of this allowance be withheld, unless the defendant shall admit certain items as debits which are unsupported by proof? But still more than this: when the evidence is before the jury, introduced by plaintiffs, and relied on by them, may they withdraw the credit side of the account, because the defendant will not consent to be charged with certain items illegally?"

Once more, in the same opinion, p. 385: "The defendant is unquestionably entitled to the evidence of the decision of the treasury officers upon his vouchers, *without reference to the charges made against him;* and in this suit he may avail himself of that decision, without, in any degree, restricting his right to object to any improper charges." Need I pursue this point further, under this decision of the Supreme Court, pronounced by a judge who, from his long practical acquaintance with the administrative and legislative departments of the government, was peculiarly fitted, even in those periods of our judicial history, to throw upon the subject all the lights which judicial ability, legislative and administrative experience, so eminently entitled him to afford?

The principles established in this case are affirmed in a second case between the same parties, (p. 387.)

In a third case between the same parties, and involving many of the points presented in the preceeding ones, (8 Peters, 399,) the arguments of counsel are more fully stated. On this occasion Mr. Justice Story delivered the opinion of the court, in the course of which (pp. 416, 417,) he recognized and reaffirmed the opinions given in the preceding cases.

From these views of the case, thus presented, it appears to me very clearly shown—

1. That under the positive enactments of the law in relation to the Post Office, there existed a connexion and relationship between the Postmaster General and the United States, and no privity between the latter and individual contractors under the former.

In the accounts between the department and treasury, the Postmaster General, and he alone, was debited with such sums as he derived from any source, in the course of his official transactions—whether paid to him from the treasury, instances of which with my limited acquaintance with the subject, I can only say, that I suppose such a source of income did not exist until after these difficulties occurred; receipts from the various postmasters and post officers dispersed from an early period of our history over a wide domain, and every day extending.

It is plain, then, from the law, as it existed when Reeside made his contracts with the Post Office Department, and during the whole period of their continuance, that such contracts were made personally, on both sides, personally with him as contractor, and in every connexion with the department, personally on the part of the Postmaster General, who

* Such was the received law in conformity also with the usages of the Executive departments, until some, or at least one of the accounting officers of the treasury has, on his own authority, repudiated it, and refused to return vouchers to establish a claim which he has rejected.

alone was accountable and responsible to the Treasury Department. The full exposition of the then existing law on this subject may be found in the very able and elaborate charge to the jury in this case.—(*Notes*, &c., 90, &c.)

The importance of these principles, and the bearing upon this particular case will become more and more apparent as we proceed.

Long after these contracts were made—after all services under them had ceased—the act of July, 1836, was passed; observe, if you please, the change which this act produced:

1. It now authorizes suits to be brought in the name of the United States. Can it be pretended that this changed, in any way, or to the smallest extent, the rights of the parties to such suits? Did it invest the United States with other or higher power, or clothe it with superior *prerogative* rights than were enjoyed by the Postmaster General up to that period? When the contracts were made, formal and solemn, direct or implied, the terms on both sides were either distinctly expressed, or as distinctly understood. Whatever they were, however framed, the Postmaster General was the party on the one side, the individual citizen on the other.

It is a remarkable and interesting fact connected with this aspect of the case, that for a long series of years, from the foundation of the government until the act of July, 1836, the only accounts between the United States and the Post Office Department were those between the former and the Postmaster General. Until that act, all suits against subordinates for delinquency were brought in the name of the Postmaster General, not merely nominally, but substantially. He was invested with entire and exclusive authority to determine what suits should be brought; to control their management when brought. The money he recovered in such suits came into his hands, went into the general fund of the department, and then entered into his account with the treasury. His omission to bring suit against delinquent postmasters makes him directly and legally responsible to the United States. No act of Congress, before 1825, in direct terms authorized him to take bonds from his deputies, yet no doubt now exists that such bonds, conditioned for the faithful performance of their duties, are legal and binding.

Now, all the contracts made with Reeside were anterior to the act of 1836; every transaction between him and the department, in which he personally acted, was prior to 1836; every item of credit allowed him, with the one exception, (if indeed that be not a debit—the last of the list, unintelligible as it stands on the treasury transcript, and thus expressed: "1841, Sept. 14, 474—To cash for his drafts, 17th Oct'r;" no carrying out of the amount,) is anterior to July, 1836. If this be a debit, it had already been made under the same date; if a credit, it wipes out all the debits charged to him on that day.

It will scarcely be pretended that Reeside was deprived, by the act of July, 1836, of any rights which the law gave him when these transactions occurred, or was subjected to different and heavier responsibilities than that law imposed. As the circuit court said, (p. 114, after an analysis of this act of 1835,) "Generally viewed, the act of 1836 refers to the future action of the department, not to operate on the past transactions; laws are construed so as to operate as new rules

to govern cases which arise under it, not to alter the law which existed when past transactions took place; retrospective legislation is odious, and generally unjust where it professes to act on vested rights or existing contracts," &c.

Under this rule of interpretation, the only effect of the law of 1836 was to change the form in which suit was to be brought, and to make that the imperative duty of the Postmaster General which had formerly been left entirely to his discretion.

Here, then, is an action instituted under this new law in the name of the United States, and we presume, though there is no evidence of the fact, by the express direction of the then Postmaster General, under the 17th section.

Let it be supposed that this suit had been brought under the act of 1825, in the name of the Postmaster General; that the same account now exhibited had then been filed by plaintiff; it would, on its face, of course show debits to the amount of $513,067 08; credits, $465,-994 46; and the balance claimed $47,072 62. We will pursue this supposition a little further. The case comes on for trial on this account, to which the single plea of non-assumpsit is pleaded. No set-off is claimed. Under the law, as I have shown it to be, from the plain and explicit language of the Supreme Court, before the court and jury, each and every item of credit is finally and conclusively settled. Not a cent of it can be withdrawn. This part of the account is not open for contestation; the defendant cannot be required to adduce any evidence to sustain it; the plaintiff cannot be allowed to produce testimony to controvert one single item; the only matters in dispute are the items of charge; these the plaintiff is bound to prove—the defendant is at liberty to controvert.

On the trial the plaintiff fails to prove that there have been any such failures in the transporation of the mail for which defendant has been mulcted in fines, or defendant affirmatively shows a valid and legal excuse. Plaintiff fails to produce any such checks or drafts as are in the account charged against defendant, or that he was in any way responsible for them; or defendant shows on his side that they are forgeries; that he is not and never was connected in any way with them; and that consequently these must be stricken from the debit side of the account. The plaintiff again fails to show by any proof that the sums charged to have been paid to W. J. Watson in 1836 and 1838 were paid in point of fact, or that defendant was in any way connected with or responsible for such payments, and therefore they are not proper items of charge. Or again, to advert to the charge of $2, for so much money paid to John Moore, of Warrenton, Georgia, for finding and delivering a mail bag. No evidence that Reeside was a contractor on the route; none that such mail bag was lost; none that it was found and delivered, or to whom; none that such a munificent reward was either earned or paid; none to show when, by whom, or by what authority paid. The jury on the trial distinctly repudiate each and every of these items of charge, deduct these items from the debit side of the account, and, after such deduction, allow and find a balance in favor of defendant. We may further suppose that, instead of a general verdict, merely finding a gross sum as a balance, they find a more particular verdict; and although not precisely a technical

phraseology—a special verdict—they distinctly say, they find that such and such items of charge are wholly unsupported by evidence, or have been completely disproved by defendant; or the court should pronounce that they are illegal. May I ask of the learned solicitor, and, if possible, with even more deference and respect, of this honorable court, what would be the just, the legitimate, and the most strictly legal effect of such a finding, expressly sanctioned by the court, as sustained by evidence and founded in law?

With great deference I submit that the legal and constitutional result ought to be, that every such item of charge which has thus been denounced by the jury and the court, the very tribunal before which the plaintiff resorted—to whose judgment and decision he appealed and compelled defendant to appear and submit, ought at once to have been expunged from the debit side of this account on the books of the department; or if black lines were not drawn around them on the books, or obliterated by erasures, there should and ought to have been such counter-entries made as would show to the present and future generations that Reeside was not a defaulter, but that a large sum remained to his credit.

Shall I be answered that all this is responded to by saying the United States cannot be sued? Upon this question I shall, with the permission of the court, submit some remarks. At present, and in this connexion, I contend that such a question does not arise.

Another, and in my humble judgment a very different, objection has been raised, and I admit, from high authority, viz: that inasmuch as the Constitution provides that no money shall be drawn from the treasury without an appropriation, the amount found due by the government to Reeside could not be paid without an act of Congress. It is most devoutly to be wished that such precise expounders of the Constitution would bear in mind that that instrument was not only designed to confer, and with great limitations, powers upon the government—its principal object was to secure the rights of the citizen. Admitting to the fullest extent the obligatory force of this consitutional provision, in regard to which I shall make some further remarks in the progress of my argument, I may be permitted to suggest in this connexion, that it has not the remotest bearing upon any point legitimately involved in this controversy, here or elsewhere, now or heretofore.

Is it, or can it be pretended, that a special act of Congress is required to pay out of the public treasury every claim for services rendered, or debts incurred by the government through the instrumentality of its authorized agents? We have hundreds of men engaged at this time on this very capitol which we are occupying; in our navy yards, and in other avocations, we have our contractors for furnishing materials—the mechanics engaged in their several employments; was it ever heard, imagined or dreamed, that no one of these individuals could be paid his just dues without an act of Congress specially for his relief, recognizing the debt, and appropriating the specific sum required to discharge the obligation? The government could not carry on its operations for one month were such the requirements of the law. Is a special act of the legislature necessary to pay each officer and soldier of the army, each officer and sailor in the navy? The whole idea, with great deference to those who have advanced such an objection, is

preposterous and absurd. Show me one act of Congress which directs the Postmaster General to pay any one contractor for transporting the mails. Show me one which makes the appropriation in favor of Reeside to entitle him to receive one cent of the many thousand dollars that have been paid him. Were such special appropriations necessary, Congress would be required to sit every hour of a thousand days in every year to pass the necessary appropriation bills; it would require hundreds of huge volumes every year to contain the acts of the legislature, infinity of clerks to engross them, and more than the whole time of the President to examine and sign them. The whole conception is preposterous and absurd. Look into the acts of Congress "making appropriations," and see whether or not I am wrong. Hundreds of payments have been made to Reeside himself, hundreds of thousands to contractors for carrying the mail, yet not one of their names appear on the statute book. If argument and authority are required to sustain me in the views thus presented, both will be found in the case of *United States* vs. *Kendall*, in 12 Peters. An act of Congress was passed July 2, 1836, authorizing and directing the Solicitor of the Treasury to examine and adjudicate upon certain claims of Stockton & Stokes, as contractors for carrying the mail, &c., to ascertain the amount, if any, due to them, and "the Postmaster General was directed to credit such mail contractors with whatever sum or sums of money, if any, the said Solicitor shall find to be due to them.—(12 Peters, 528.) In the execution of the duty thus imposed on him, the Solicitor decided that a large sum was due to the contractors, amounting, principal *and interest*, to $161,563 89.—(12 Peters, 530.) The Postmaster General refused to pass this amount to their credit. He did, however, cause a part of it to be thus credited—$122,101 46—*which was accordingly paid.* Where was the appropriation?

The balance he refused to credit, and therefore to pay. A mandamus was applied for and granted by the circuit court, and the correctness of this judgment affirmed in the Supreme Court, commanding him to credit said contractors with the full amount of the award, (p. 534.)

In p. 613–14, the court examines this branch of the subject and employs this language, strictly applicable to the case at bar: "The act required by the law to be done is simply to credit the relators with the full amount of the award of the Solicitor. This is a precise, definite act, purely ministerial, and about which the Postmaster General had no discretion whatever. The law, upon its face, shows the existence of accounts between the relators and the Post Office Department. *No money was required to be paid;* and none could have been drawn out of the treasury without further legislative provisions, if this credit should overbalance the debt standing against the relators. But this was a matter with which the Postmaster General had no concern. He was not called upon to furnish the means of paying such balance, if any should be found. He was simply required to give the credit."

The rule for the mandamus was made absolute, the credit was given, and *eo instanti*, the balance appearing to be due to the relators was reluctantly, and with no very good grace, paid them. No further legislative provision was then deemed necessary; no appropriation by Congress was required. There were, and there have constantly been since, ample funds in the hands, at the disposal of the Postmaster

General to pay any balances which might appear on the books of the department to be due to contractors. In the ordinary transactions of the department at present, the funds are deposited in the treasury, and drawn from thence by the general appropriation acts. Special appropriations are only made in extraordinary cases. The moneys due to contractors are paid, as a matter of course, without such special appropriations.

At this time of day, it cannot be doubted by any one at all familiar with the theory and practice of the department, with the laws passed for its government, or the usages under those laws, which have acquired an almost equal authority, that during the whole period of Reeside's connexion with it, it was within the legal and constitutional power of the Postmaster General to refuse to charge to Reeside any one item debited to him, which was in itself improper, whether for want of evidence to sustain it, or want of law to warrant it. As little can it be questioned that the same authority might have carried to his credit any items of credit which were thus sustained by law and evidence. As little can it be denied, that upon such corrected statement of his accounts, if the balance now found by the jury to be due him had appeared on the books of the department, it was equally within the powers and the duties of its head to pay such balance.

If these views be not erroneous—and I confess myself unable to perceive any fallacy or defect in them—then may I not be allowed to say, that the only two grounds on which any objection to this claim can be founded are—1st. That whatever may be the justice, equity, or lawfulness of the claim now presented, the prerogative of the government, exempting it from suit, prevents the verdict and judgment which we have obtained from being obligatory on the government. 2d. That it could not have been rightfully paid without a specific appropriation by Congress; have no foundation in, and can derive no support from the Constitution, the general law of the land, the particular statutes for the government of the Post Office Department, the usages which, so far as they have influence, have settled the construction to be given to those laws, or the principles of equity and justice.

Satisfactory and conclusive to my own mind as are the views which I have presented, a pretty long experience has taught me not so confidently to rely upon my own impressions, as to omit presenting to the court which I address other and cumulative arguments leading to the same conclusions. The importance of the case to all parties concerned, the great principles which it involves, the consequences which must flow from its final decision, must furnish an apology to this court for the consumption of so much of its time; while the personal feelings which have stimulated me for near twenty years' laborious investigation of it in its various bearings, and the interest which I feel in the result, will, I hope, excuse me for so trenching upon the time and attention of the court. At the first blush, this case exhibits some very peculiar and strongly marked features. It will furnish materials for new commentaries upon our Constitution and laws, both at home and abroad.

The United States comes voluntarily into one of its own courts, created by its own authority, exercising such jurisdiction, and clothed with such powers as the United States have chosen to confer, debarred

from exercising any not thus given, presided over by judges holding office under the same government, and paid by it for their labors; the marshal also appointed by the same authority, and removable at the pleasure of the executive; the jury composed of citizens bound by every obligation to allegiance to the same government.

In private controversies adopt and act on similar principles—what would be the result? Let a powerful plaintiff, a private citizen, come into court to prosecute his demand. The plaintiff has the power to create the tribunal before which the cause is to be tried; he has the exclusive authority to confer and to limit the jurisdiction of the court; that court can do nothing which he has not authorized it to do; he frames the laws for its government; he appoints the officer to select the jury; and every one of that body must be composed of men who owe him allegiance.

If, under such circumstances, the humble individual contending with such an adversary would encounter fearful odds, is this position much improved when his antagonist is the government, a hundred-handed Briareus? The judicial history of our country might furnish abundant proofs, that the citizen wages an unequal war when he has to encounter such a giant. In some particulars, this case affords an apt illustration of this inequality—the government selects its own court, its own time for trial; prepares, through its own officers, its accounts; can command the attendance of witnesses from any distance; on the part of the defendant, counsel are to be paid, witnesses paid, out of an already exhausted purse. After weeks of contestation, a full, fair, and impartial investigation, the jury find a verdict for defendant, and certify, that instead of being a debtor and a defaulter, a large balance is due to him. An application is made for a new trial, and the court expresses its satisfaction with the verdict; a writ of error is sued out to revise and reverse the decisions of the court; it is abandoned. Yet, when the defendant asks to be credited with the amount due him, thus established, he is met with this objection—and this not from the Post Office Department, for there they knew the fallacy of the pretence—there is no act of Congress making an appropriation to pay this debt. 2d. The government has the royal prerogative of not being suable, and therefore you cannot resort to any process to compel it to pay a just debt.

The validity of the claim cannot longer be denied; the amount of it can no longer be controverted. The debt has been established judicially; it has passed into a *rem judicatam*. Yet upon the two grounds above-mentioned, the unfortunate citizen is denied all relief. For near fifteen years he, his widow, and children, have been suppliants for justice at the doors of Congress; he and they are unable to obtain any action on the case. The judiciary has done its work, and performed its duty; its powers are exhausted. The Executive refuses to see the law, as laid down by judicial authority, executed. The legislature, too much engrossed in other concerns, cannot be induced to examine into the justice of the demand, or to make an appropriation to pay a just and legally established debt. All this has occurred in a country which has put forth in its organic law, as one of the principal objects of the government which it is forming, "to establish justice;" which, among the first acts of its legislature, passed a resolution "that

an adequate provision for the support of the public credit is a matter of high importance to the honor and prosperity of the United States."—(See Resolution of the House of Representatives, 21st Sept., 1789.)

In a report made by the Secretary of the Treasury, in answer to the call upon him, he embodies the enlarged views of a statesman keenly alive to the requirements of public faith and private integrity. Let me be permitted to quote a sentence or two from this masterly paper: "If the maintenance of public credit then be truly so important, the next inquiry which suggests itself is, by what means is it to be effected? The ready answer to which question is, by good faith, by a punctual performance of contracts."

Some observations have already been made upon the two grounds which have been raised on this subject as interposing obstacles in our way: 1. There is no appropriation. 2. The government is not suable. We must crave the liberty of discussing at some length both these propositions, and to venture to suggest to the court the views which we take of them, their true significancy, and their entire inapplicability to the case in hand.

We have endeavored to show that the first is wholly foreign to the questions before us. What we have asked is not a specific appropriation by Congress to pay a just debt; this may perhaps be unnecessary. We ask, that when a court and jury, in the undoubted exercise of their functions, have solemnly and finally adjudged that certain debits charged against us by a department of the government have been erroneously charged; that they have no support in the law or in the evidence, and that this judgment has been pronounced by the very tribunal to which the government was constitutionally and by law required to resort, to prove the validity and propriety of such charges; these items should, in some form most in accordance with the usages of the department, cease to appear on its books as debits against us. Whether this be done by counter credits, or by an erasure of debits, is immaterial to us. The result of either course would be the same. The form is immaterial; the law entitles us to the substance.

If necessary to go further, we say, that inasmuch as the law expressly provides that a citizen thus sued shall be entitled to exhibit, by way of set-off, any claim, legal or equitable, which he has against the government which has been presented to the proper accounting officer, and disallowed by him; and that the validity and amount of such counter claim shall be finally and conclusively adjudicated by the judicial tribunals of the land, we ask that, to the extent of every such claim thus legally presented, thus lawfully and judicially adjudged to be right, a corresponding credit shall be given.

These are rights already conferred by law. They were rights existing under the law as it stood when Reeside became a contractor; they have continued ever since. Such acts of the department—the cancellation of debit illegally made, the disallowance of credits lawfully claimed and allowed by court and jury, and thus changing the whole structure and face of the account—require no legislative provision.

As has been before observed, no special appropriation by Congress is required. What we want, and have wanted, is the erasure of debits adjudged to be unlawful, or, if necessary, the allowance of credits which, with equal authority, it has been pronounced that we are

entitled to. Give us the credits, and the money will be forthwith paid out of the millions annually appropriated to the use of the department; and should there be a deficiency, the Postmaster General will ask for an enlarged appropriation, not to pay this particular debt, but to discharge the obligations resting upon his office. The money will be paid, as it was by Postmaster General Kendall to Stockton & Stokes, without the necessity for any particular appropriation, but as a credit apparent on the books of the department.

Should we be mistaken in all this—should it be deemed necessary for Congress to pass a special act of appropriation—how then stands the case? It does not, in the slightest degree, impair or draw in question the justice and validity of the claim. An appropriation by Congress to pay a debt due by the government does not make that a just debt; it assumes that to be the fact, and orders the payment. It only performs its part of the contract; it neither creates the contract nor incurs the obligation to perform it. These are the antecedents. A man may refuse to pay a bill which his baker, butcher, or grocer may present; he may be privileged from suit for its recovery. If he pays it, well for the creditor; but his check for the money does not create the obligation or the debt. The claim being just, it would be dishonest and dishonorable in him, particularly if possessed of ample means, to refuse, or even to postpone payment. If he deny the validity or the amount of the claim, an appeal is made to the judicial tribunals of the land, whose judgment settles these matters of controversy, and furnishes competent evidence conclusive on both parties as to the existence and extent of the indebtment. This is law, this is justice.

That it rests with Congress to draw money out of the treasury, no one questions. The power resides in that body. This is a power conferred on Congress to enable it to do right; it is not a grant of a right to do wrong, or to deny justice. Congress having the exclusive power to draw money out from the treasury, may refuse, or omit, to appropriate funds to pay the President, the heads of departments, or the judges, their respective salaries; are these salaries, stipulated by law, the less due to those officers? Should the legislature neglect to perform its duty, and by adopting a course sometimes threatened, but I believe never executed, in the English Parliament, of withholding supplies, what would be the consequence? It has been declared, by high judicial authority, that it is the bounden duty of Congress to exercise those powers which are conferred on it by the Constitution.—(1 Wheat., 334.) Without doubt, Congress possesses, if the expression may be applied, the physical power to refuse to pass any appropriation acts, to pay any of its debts; but, assuredly, it possesses no such moral power. The distinction has been forcibly taken by C. J. Marshall, (12 Wheat., 348:) "Superior strength may give the power, but cannot give the right." It would afford a specimen of analogous and equally logical reasoning to infer that, because the bandit had the physical power to rob, the assassin to murder, or the bully to beat, that, therefore, they possess the right. The wanton exercise of such powers would be a flagrant wrong, a palpable injustice.

Even under the Constitution and laws, as they now stand, the judicial department possesses and exercises a great controlling influence

over the legislative. The powers which belong to Congress, equally with those which belong to the executive and judiciary, must be conferred by, or founded on, the Constitution. Although the judiciary cannot supply the shortcomings of the legislature, it may check it when it transcends its powers. When, in September, 1789, Congress, in the judiciary act, conferred upon the Supreme Court the power to award a writ of mandamus, the court itself held that such a provision was unconstitutional and void.—(*Marbury* vs. *Madison.*) When, in 1792, Congress passed a law imposing upon the judges of the circuit courts certain powers, the judges came to the conclusion that this statute was repugnant to the Constitution. These cases have been adverted to because they occurred at an early period of our constitutional history, and have ever since been regarded as of undoubted authority. A similar controlling power has always been exercised over the acts of the executive. If the executive issues instructions to a military officer not warranted by law, they furnish such officer with no excuse for an illegal act done in conformity with his orders. If a collector, by direction of the treasury, seizes a vessel or cargo when there has been no violation of law to justify such seizure; or, in a like case, exacts the payment of duties beyond what are imposed by law, he becomes personally responsible for his illegal acts.

The legal, and constitutional, and practical effect of such adjudication is to annul and make absolutely void every act of Congress, every action of the Executive which has thus been adjudged to be unwarranted by the Constitution or the laws; no act of Congress can be enforced which the judiciary has pronounced to be unconstitutional; no demand can be enforced against the citizen which the courts have by a final judgment pronounced to be originally invalid, or to have been legally discharged. Happily for us, the other departments of the government are compelled to resort to judicial tribunals to enforce against the citizen what they claim to be their rights; fortunately this country has, in so many instances, found a judiciary which would afford a shield and a panoply against legislative encroachment and executive usurpation.

It is apprehended that the soundness and truth of these views cannot be controverted. If their immediate application to the case at bar be not at once perceived, it is hoped that this will become apparent as we proceed. In this immediate connexion I will merely suggest, that if these be sound and fundamental doctrines of our law, they may at least furnish us with safe guides in the interpretation of the written law, if there be on its face any ambiguity or room for reasonable doubt. Is it consonant with these and all the other principles which our forefathers assumed—for they are, although not in precise words expressed, obviously and necessarily implied—that by establishing justice, they meant merely to confer upon the government the most full and ample remedies to punish the citizen for any wrong he may have committed, to compel the payment of any debt which he might owe; the citizen on his part having no redress for any injury, however illegal and enormous, which has been perpetrated against him; no means of obtaining payment of any debt however justly due him? Are we to put such a construction upon our Constitution and laws as to place us—a

nation which recognizes no other sovereign than law, and no other law than that which we have ourselves enacted, excepting that which emanated directly from heaven, and to which our ancestors labored to conform? Are we to be so recreant to all that we have venerated, as to set at defiance the universal law of honesty and good faith, and to assume before the world and before God the position of being the only nation within the circumference of Christian civilization, of having the power, and therefore exerting that power, of refusing to pay to a citizen a debt judicially established as valid in its origin, and judicially ascertained as to its amount?

It has been frequently and truly said, that lessons of truth and wisdom may be gathered from the brute, and even the insect creation. "Go to the ant, thou sluggard," is an injunction or advice of Holy Writ. We are also told by high authority that "history is philosophy, teaching by example." It was with no little surprise that I heard on yesterday, the learned solicitor assert as a fact that no sovereign power was suable in the ordinary course of administering justice, or without its special assent. Notwithstanding he is so much fresher from his studies than I can claim to be, I have no hesitation in saying that in this he is clearly wrong, and that, on the other hand, it may be said that, with the exception of ourselves, there is no sovereign within the range of Christian civilization which denies the right of the subject to sue it in its own courts. An interesting incident, bearing upon the question of the prerogative of a sovereign to be exempt from suit, is related by two of the most distinguished writers of modern times. Prescott informs us that Diego, the son of Columbus, "did not succeed to his father's dignities till he had obtained a judgment in his favor against the crown from the council of the Indias, an act highly honorable to that tribunal, and showing that the independence of the courts of justice, *the greatest bulwark of civil liberty*, was well maintained under King Ferdinand."—(3 Presc., Ferd. and Isabel, 245, note 21.) A briefer reference is made to the same thing by Washington Irving in his "Introduction to the voyages, &c., of the companions of Columbus," p. 7. He (the author,) "has had some assistance also from the documents of the law case between Don Diego Columbus and the crown."

Can it be possible, that we Americans, in the middle of the 19th century, are compelled to resort to precedents set in Spain, by the author of the Inquisition, the exterminator of his own Moorish subjects, the persecutor of the Jews, the extirpator of protestantism, so far as his power, and that continued by his bloody son and grandson, would go, to learn lessons of justice, as between the humble citizen and his own government? Are we to be forced to advert to the proceedings, under an absolute despotism, to inform us what the dictates of justice demand? Are we to resort to such times, to teach citizens of the United States what are the obligations of government towards them; what the rights of the citizen against the government? Are we to learn from them what is the interpretation to be given to that noble preamble to the Constitution, which declares as one of its pre-eminent objects and designs, to "establish justice?"

The only answer that has been or can be given to our claim is, the

government has the *prerogative* of not being suable. For myself, I am almost tempted to abhor and detest the word prerogative. Certainly I find no such word as prerogative in our Constitution. I find no statute establishing or recognizing its existence. A very near approach was made to this doctrine in the argument of counsel in *Kendall* vs. *United States*, in 12 Peters, but it received, instead of countenance, a severe rebuke from the court.

Whence, then, is this exemption of the sovereign from suability derived? I think it will appear, on close examination, to be a spurious offspring from a bastard progeny of *royal* prerogative in England. It is something more than an idle speculative curiosity, which, on this occasion, it is hoped will justify, if not demand, an inquiry into the history and extent of this prerogative under the English law.

The result of such an examination will, it is believed, satisfy every studious inquirer into the history of English jurisprudence that this exemption from suit did not originally appertain to the king at common law; that in the most despotic times it never was claimed by the king; that in no period of English history has it ever been claimed as more than a personal prerogative of royalty; and in the worst times has never amounted to more than a denial to the subject of one specific form of remedy, while it left open to him other equally effective and speedy legal means of relief. The annunciation of such propositions may, perhaps, create a smile of surprise and more than incredulity in the minds of many. They are not hastily or inconsiderately advanced.

1. At an early period of the English history the king was amenable to suit in his own courts. In years long since gone by, it devolved upon me to present this point to the Supreme Court, in the case of *Kendall* vs. *United States*, in the year 1838. It was then shown, upon authority, that at a very early period of English history the king was suable as a private subject. Writs in a mandatory form were issued, directed to be served on him. "*Præcipe Henrico Regi Angliæ*" was the form. In 5 Bac. Abr., Gwib. edit., p. 571, several cases from the year-books are cited to sustain this position. A statute was passed in the reign of Edward II, entitled the *Prerogativi Regis*, (17 Edw. II, st. 1,) which affirmatively set forth certain prerogatives of the king: and Reeves, after giving a summary of its provisions, adds, (2 Reeves, Engl. Law, 311:) "Such are prerogatives of the crown, which it was thought convenient at that time to ascertain and settle *by a solemn declaration in Parliament*. It is probable there were many other claims, which were either not generally admitted or too well known to need any declaration of them at present." When it is borne in mind that the instances of such mandatory writs directed to the king occurred in the reign of Henry III, and that the cases in the year-books recognizing them were in the reign of Edward III, it can hardly be believed, for a moment, that when this statute passed in the reign of Edward II, that the omission to introduce this particular claim of prerogative arose from its coming within the category of being "too well known to need any declaration;" but rather, if any such pretension then existed, it was excluded because "not generally admitted."

2. When and how this special prerogative found its way into the English law, and became recognized by English judges, it is not very

easy to ascertain. Whenever and however it became so, it was always put upon the footing of a merely personal exemption of the sovereign from process; and whenever expressed, it is accompanied by the most positive and direct assertion of the right of the subject to legal redress for the infliction of a wrong or the withholding of a right. Lord Coke (5 Rep. 55) is clear and explicit in this view of the matter; and, as will be shown, it was the admitted law after the revolution of 1688. This is the language of Lord Coke: "It was resolved in all these cases *at the common law*, when the king was seized of any estate, &c., he who has right could not by the common law have any traverse upon which he was to have *amoveas manus*, (that is, a peremptory mandate to take his hands off,) but was put to his petition of right *in nature of his real action*—which he could not have against the king, because the king by his writ cannot command himself—to be restored to his freehold." Here the existence of the privilege, its foundation and its extent, are all given. The monarch could not be commanded by his own writ—emanating from himself, sealed by the keeper of his conscience, his chancellor—to do any act; but was this purely formal difficulty to interpose any substantial impediment in the way of justice? Far from it. The form of proceeding was changed, but the substance remained intact; and no British subject could be deprived of his property, real or personal, nor could any debt be withheld from him by the crown without a remedy at law. Without going into a long series of citations to establish the positions which have been presented, it may be confidently asserted that, from Lord Coke's time down through Comyns and Gilbert, who is I suppose the chief author of what is known as Bacon's Abridgment, not a single writer of any authority can be found who, while asserting the king's personal prerogative of being exempted from the service of any mandatory process, does not, as distinctly, assert the right of the subject to redress through the instrumentality of the king's own courts. In this connexion I will merely add, that even among these ancient authors some allow so extensive a remedy as gives the subject a right to the MESNE *profits* of land illegally withheld from him by the crown, (5 Bac. Abr., 574, and the authorities there cited;) others asserting that the judgment *quod manus domini regis amoveantur*, puts the king instantly out of possession, without any process of execution.—*Ibid.* Lord Chief Baron Comyns, himself recognized by Lord Mansfield and by Lord Kenyon as of high authority, even when he cites no other in his support, expressly says, that when the judgment is given, "*quod manus domini regis amoveantur*," thereupon a writ of *ouster les mains* goes, which is to the effect that the plaintiff shall have his lands seized by the king, out of the king's hands.—Com. Dig. Prerog., D. 90; and for this he cites Stamford.

Thus stood the common law during the period when our ancestors established themselves upon this continent. They brought with them this common law. As Mr. Justice Story says, and I presume every American will unite in the language: "The universal principle, and the practice has conformed to it, has been that the common law is our birthright and inheritance, and that our ancestors brought with them, upon their emigration, all of it which was applicable to their

situation. The whole structure of our present jurisprudence stands upon the original foundations of the common law."

It cannot have escaped the observation of the most careless student of our early history that what was most highly regarded in this common law was not the remedies it afforded to the one subject, for the injury or wrong which might be perpetrated against him by another subject, his co-equal, but it was the protection of the subject against royal authority. It was the undue stretch of royal prerogative and power which had caused the resistance to Charles I, and brought him to the scaffold—an event which, to my amazement, still stands on high authority in England as his martyrdom. It was a repetition of the same course which drove James II from his throne, and brought about the great event in English history, the revolution of 1688.

Our ancestors, I mean the pilgrims of the north, the cavaliers of the south—I may be permitted to add the Huguenots—all brought with them these great principles of the constitutional, fundamental rights of the individual man, against the prerogatives claimed by any crowned head. They never acknowledged, in accordance with Sir Robert Filmer, "the right divine of doing wrong."

It was, however, after the first settlements on this continent that there occurred one of the most remarkable cases in judicial history: I allude to that which is reported in 14th State Trials, and is known and will be remembered as long as English constitutional law is remembered on either side of the Atlantic. It is known as the Banker's Case. It originated, to employ the language of the present distinguished Lord Chief Justice Campbell, "out of the infamous shutting up of the exchequer in the reign of Charles II, whereby the king intercepted, for his own private uses, nearly a million and a half of money, which should have been applied to the repayment of loans to the government. After the robbery had ruined many individuals, had destroyed public credit, and paralyzed trade, Charles, as a partial indemnity, granted to the bankers, by way of interest at six per cent. on their debts, certain perpetual annuities, which were charged on the hereditary excise. The dividends were paid till the year 1683, but never after. William III refusing to acknowledge the obligation as much as James II, the bankers presented a petition, or *monstrans de droit*, to the barons of the exchequer, praying for payment of the arrears of the annuities, and the attorney general *demurred*. Two questions arose: 1. Whether the grant was good. 2. Whether this was the proper remedy. The whole court held that, generally speaking, the king can alienate any part of the public revenue, although Baron Lechmere doubted whether the hereditary excise was not made inalienable by act of Parliament; and they all agreed that this petition was the proper remedy. So they gave judgment for the complainants, directing payment to be made to them at the receipt of the exchequer."—(4 Lives of the Chancellors, 116, 117.) A writ of error was sued out, which carried the case to the exchequer chamber, in which sat the Lord Chancellor, &c., assisted by the common law judges. Lord Campbell continues: "Almost all the judges adhered to the judgment of the court below, except C. J. Treby, who thought that the barons had no authority to *order* the payment, and therefore

that the remedy by petition to them was inapplicable." Lord Chancellor Somers, after great and laborious research and deliberation, came to the same conclusion. His opinion was, "that the king had authority to alienate the property of the crown; but that the barons of the exchequer had no authority to order the lord treasurer, to whom they were subordinate, to make any payment out of the royal revenue."

So far, then, from denying the obligation to pay, he distinctly affirms it; his difficulty was only as to the form of remedy appropriate to the case. He does not question the right of the subject to have his claim adjusted judicially; and the only ground upon which he dissents from the rest of the court and judges is as to a mere technical formality.

All agreed that there was a right, and that there was a legal remedy. Somers and Treby thought that remedy was by a petition of right; the rest thought it was rightly sought by a *monstrans de droit*. To us, or at least to me, the distinction seems a trivial one; and, indeed, when I compare the opinions of the learned men who gave their judgments in this celebrated case, I am strongly inclined to the opinion that it was so considered by them; or if they did not so declare it, they at least showed that such was the fact.

On this side of the Atlantic we know little or nothing of a *monstrans de droit*, or of a petition of right. To the majority of American lawyers it seems that the distinction between them is little, if anything, more than a question between tweedledum and tweedledee. If, however—and I speak with diffidence and reserve—the difference mainly, if not entirely, consists in this: that the *monstrans de droit* is directly addressed to the court, asserting a right on the part of the subject to real property which he alleges the king withholds from him, the rightful owner, by a right shown by some record; in such case, if the complainant establishes his right, the judgment is peremptory, and, according to some authorities, executes itself. The form of the judgment is "*ut manus domini regis amoveantur.*" By the simple effect of such judgment the king is, without any process of execution, dispossessed, as we are informed by Lord Chief Baron Comyns. The same high authority tells us also that the complainant becomes entitled to the mesne profits, but he does not inform us how they are to be obtained.

The petition of right, as I understand it, is the remedy when a subject claims of the crown a sum of money to which he is entitled, or any other demand of a personal character; in which case he presents a petition, nominally addressed to the king, but substantially to the chancellor, in which he sets out his ground of complaint. If on its face, assuming the allegations it contains to be true, the chancellor endorses on it usually the general *allocatur*, Let justice be done, or right administered as prayed. This is equivalent to an original writ out of chancery, and is a warrant to the appropriate court to entertain jurisdiction of the case, where it is as regularly tried and decided as in an ordinary case between subjects.

Notwithstanding, therefore, the great consequence and importance which have been attached to the Bankers' case, and in many respects most deservedly, yet, unless I have misapprehended it, the entire

difference which existed among the great dignitaries who decided it was a merely technical point; all admitting the legal existence of the claim, and that, it will be remembered, was limited to the arrears of interest—the one side insisting that the appropriate remedy, the *monstrans de droit*, had been pursued; the other, that relief should have been sought by the petition of right.

It would be hardly becoming in us, American lawyers, to venture to decide upon such a question, in which such men as Lord Somers and Lord Holt differed in opinion, upon a point of purely English law; but whilst entertaining the most unfeigned deference to such able and learned lawyers, I must confess, on the one hand, that I have not been able to perceive, in their discordant opinions, one question, on which they differed, which deserved the great exhibition of talent and learning which was displayed on both sides. I must, with equal candor, acknowledge that in my humble judgment Lord Somers had the better of the argument. While, therefore, entertaining the opinion that Lord Somers was in the right in saying that the proper remedy in such a case was the petition of right, and not the *monstrans de droit*, no student of English constitutional jurisprudence can appreciate more highly than I do the importance of this case—an importance enhanced by the great principles embraced in its substantial merits; the great amount of learning exhibited in the elucidation of those questions; the very exhibition of the narrow grounds of difference which finally were displayed; the great doctrines of the rights of the subjects which were promulgated on all sides, and the consequences which flowed from it.

We have given, from Lord Campbell, a living authority, so far, a summary of the proceedings in this case; a very full and minute report may be found in 14 State Trials, p. 1, &c. The argument of Lord Chief Justice Treby will be found p. 23; and he, in his opinion, says: "I take it that the treasurer may, *if he pleased*, pay these annuities to the petitioners." There can be as little question that the Postmaster General might have paid, had full authority to pay to Reeside all that he claimed, and beyond all question, all that the jury found due to him. He adds, however, that this remedy, (that is, the one sought in that proceeding,) "is not warranted by the course of the exchequer. If there were *any such usage*, I agree it would be the law of the land." Here we find for the first time, so far as I am aware of the fact, the doctrine under which American citizens have so long suffered, that *usages* in the treasury constitute law. (The argument of Lord Chief Justice Holt, is p. 29. In p. 34, this distinguished judge says: "We are all agreed that they (the claimants) have a right, and, if so, they must have some remedy to come at it too." "The remedies at common law, to recover against the king, were by petition, or *monstrans de droit*," (p. 38.) The ground taken by the lord keeper in reversing the judgment of the barons of the exchequer, was, that "the patentees had not taken *a proper remedy* by petition to the barons, &c.; and that there only remedy was by petition to the king himself. Somers, who was then lord keeper, prepared a most learned and able argument, (p. 39,) in which he concurred with Chief Justice Treby. But as clearly appears from passages in this argu-

ment, he puts his judgment entirely upon the ground that the complainants had not pursued the *exact course of remedy*. In p. 105, towards the conclusion of his argument, showing that the appropriate remedy was by petition addressed to the king himself, he thus expresses himself:

"Nor is it to be said, that in the method where the application is to be made to the person of the king, the subject is precarious, for it is to suppose what is not to be supposed in law. It is a supposition contrary to the principles upon which the English constitution is framed, which depends upon the honor and justice of the crown; such kind of suppositions may be carried much further. You may as well say all property is precarious, because you may suppose the king will make no judges, or will adjourn the terms from time to time; or will suffer no writs to issue, without which no suits can be. *It must be presumed the king will pay his just debts*," &c.

So in page 104: "All I have said *goes only to this particular manner of proceeding*, as being altogether new. It only relates to the new assumed power of the barons immediately over the revenue in the receipt of the exchequer. It does *in no sort* lessen their known power over the revenue while it is *in transitu;* nor does it exclude them from any legal course, whilst the revenue is *in the hands of any inferior officer*. It does not preclude the subject from suing to the person of the king, by petition of right," &c.

It then clearly appears, that the only difference between the learned judges in that case, was as to the mere form of the remedy. This is distinctly so stated by Lord Somers himself.

The judgment, however, of the barons was reversed by a *ruse*. In the exchequer chamber, the common law judges had been called in. With a single exception, they were unanimously in favor of affirming the judgment. It was, therefore, deemed expedient to get rid of them, and they were not allowed to have a voice in pronouncing the judgment.

The case, however, did not end here. It was carried to the House of Lords. In pages 108–'9 will be found the formal assignment of errors; page 111 is the judgment: "After hearing counsel several days to argue the errors assigned upon said writ of error, and due consideration of what was offered on either side, it is this day ordered and adjudged by the lords spiritual and temporal, in Parliament assembled, that the said judgment of reversal shall be, and is hereby, reversed, and that the said judgment, given by the barons of the exchequer, for the said Robert Williamson, shall be, and is hereby, affirmed."

In every point of view, this case is important and interesting to an American jurist. There was no difference of opinion upon the substantial merits of the case. All agreed that the subject had a perfect, absolute right to recover, through the instrumentality of courts of justice, a judgment against the crown for a debt due to him. His right being ascertained, no one pretended that there was any legal impediment in the way of the officers of the crown having custody of the revenue, at once to allow the credits, and pay the money *in the ordinary course of their official duty*. Even Lord Somers, while contending that the lord treasurer occupied so high a position that he could not

be commanded by his subordinates, the barons of the exchequer, admitted that the exemption claimed for him does not extend to any inferior officer having possession of the king's revenue. The main, if not the only point of difference, does seem to be no more than a mere technical question of form, about as important in principle as some which have been so earnestly argued in more modern times, as to whether the plaintiff should have brought his action in trespass or in case—questions which have thrown at least a shade of ridicule and contempt upon learned and dignified tribunals of justice. This case was decided by the court of exchequer. In the exchequer chamber, the correctness of this judgment was sanctioned by the concurrent opinion of all the common law judges, with a single exception, and there appears to have been ten present. It was finally affirmed in the House of Lords. Another interesting consequence followed from this case. The great Lord Somers was impeached by the Commons. On this occasion Swift produced a work, in which, under the name of distinguished Athenians, he delineates the characters of the principal men who were made the objects of this prosecution. The 14th article of impeachment against Somers, which, to use Lord Campbell's language, "most frivolously charged judicial delinquency, particularly in respect of the celebrated judgment in the Bankers' case," (4 Lives of the Ch. 151,) alleged that he "hath declared and affirmed, in public places of judicature, that particular subjects might have rights and interests, without any remedy for the recovery of the same, unless by petition to the person of the king only, or to that effect; which position was highly dangerous to the legal constitution of this kingdom, and absolutely destructive to the property of the subject."—(14 St. Tr. 261–2.) In his answer, he denies this charge, and says: "Nor did he ever deliver, in any court of judicature, or other place whatsoever, any position whatsoever, dangerous to the legal constitution of the kingdom, or destructive to the property of the subject."—(Page 274.)

It thus appears that the language of Somers, guarded as it was upon the subject of the petition of right as the appropriate remedy for the subject when money due to him from the crown was withheld, gave great dissatisfaction to the House of Commons.

Such was then the received opinion as to the rights of the subject at common law, and recognized by the constitution of England, sanctioned by their highest courts of judicature, and by the House of Commons, at an early period of the last century. Such were the opinions which prevailed among lawyers and statesmen, courts and the legislative body, when our ancestors were sowing the seeds of constitutional freedom on this continent.—(See further, 3 Bl. Com. 256–7; 7 Com. Dig. 92–3, 78.) It is worthy of remark, that this controversy occurred in England about the time when our ancestors were laying the foundations of that edifice of constitutional freedom under which we repose. It has been our boast that we brought with us the common law; that it is our heritage and birthright, and that we claim as our own the privileges which it confers or recognizes. It is surely worth inquiring upon what foundation and to what extent does this boast rest? Certainly, it is not that part of the common law which pre-

scribes the relations between private citizens, their duties towards each other, and furnishes remedies for violations of such duties. It is not that one may have an action for an assault and battery, a trespass on real estate, or for the recovery of a debt. Such rights exist under the most stern despotism. They were enjoyed in the worst ages of imperial Rome. No, it is something higher, dearer, and more exclusively our own. It is that the law affords us a shield against governmental wrong and oppression; it is that we are secured in our persons and our property; it is that our law has laid down, as a fundamental principle, the doctrine that there is no wrong without a remedy, no right which cannot be legally enforced. These constitute the privileges which we claim, if not as exclusively our own, yet certainly as more clearly defined and more sedulously guarded under our institutions than in any other land.

In construing the provisions of the Constitution and in the interpretation of our statutes, these fundamental principles should always be kept in view. They should be our polar star to guide our every step. It is, then, with an eye firmly fixed upon these elementary truths, with a distinct recollection that many of the early distinguished jurists in our colonial and revolutionary history were deeply read in the common law, and as thoroughly imbued with its learning and its principles as the inmates of Westminster hall, that I now propose to apply this test to the language of our Constitution and of some important statutes.

The third article of the Constitution, in its first section, declares that "the judicial power of the United States *shall be vested* in one Supreme Court, and in such inferior courts as Congress may from time to time ordain and establish." This clearly indicates where this power, and this entire power, shall be reposed; in courts of justice; no where else.

The second section then provides, in terms equally distinct, that "the judicial power *shall extend* to all cases in law and equity arising under this Constitution, the laws of the United States, and treaties made or which shall be made under their authority, &c.; to *controversies to which the United States shall be a party;* to controversies between two or more States; between *a State and citizens of another State, &c.*, and between a State or the citizens thereof and foreign States, citizens or subjects."

It cannot escape the observation of the most careless and superficial student of this article, that in the enumeration of the cases to which, in the clauses I have quoted, the judicial power "*shall extend*," there is a studied adherence to the same precise and distinct form of expressions, identical in signification, and, if varied in phraseology, only so far changed as would be required of any correct writer in similar cases: "controversies to which the United States shall be a party;" "controversies between two or more States;" "between a State, and citizens of another State;" "between a State or the citizens thereof, and foreign States, citizens or subjects."

In no one of these enumerated cases, is there any distinction expressed or intimated between a plaintiff and defendant. It cannot be questioned that A is just as much a "party" to a "controversy,"

when an action is brought against him, as to one in which he instituted the suit. The judicial power "*shall extend*" (these words are imperative and mandatory) to all cases in which the United States shall be a party. If this clause neither directly nor indirectly authorizes an original suit against the United States, as little does it seem to authorize the United States to bring a suit. If the right of the government to sue is implied, as obviously, particularly after the adjudication in the Bankers' case, with which the able lawyers who aided in framing the Constitution were as familiar, and probably more generally acquainted, than American jurists are at the present day, is the right of the citizen to sue the United States by original action equally implied?

This construction, if further confirmation be needed, will be found in the subsequent clauses before cited, "to controversies between two or more States." This clause wll be dismissed with the single observation, that no construction can be given to it which admits of a distinction between the parties as plaintiff and defendant. Either may be the actor, the other cannot deny the jurisdiction; no plea of exemption as sovereign from the judicial power will here be heard.

For the moment I pass over the next clause, and proceed to remark briefly upon the last which I have quoted. The judicial power is to extend to controversies "between a State or the citizens thereof and foreign States, citizens or subjects." Again, no distinction is drawn between plaintiff and defendant, complainant and respondent. If either be an alien, and the other a citizen, the federal courts have constantly exercised jurisdiction.

I now revert to the clause which was pretermitted for the occasion. The courts of the United States may entertain jurisdiction of controversies "between a State and citizens of another State. May it not be again repeated, this clause indicates no difference between the cases where the State is a party prosecuting or the party sued. The framers of the Constitution, to use the language of one of the purest and ablest men who had himself aided in framing the Constitution, and was among the early appointments to the bench of the Supreme Court to expound it, "knew no distinction of persons."* Before the court where he presided, all parties stood upon a perfect footing of equality; all stood upon the Constitution—the best platform for a court of justice, whatever may be thought of it in a political caucus or convention. There are other provisions in this admirable paper, which reflect light each upon the other. In the 1st article of the Constitution we find this language: "All legislative powers *herein granted* (mark the expression, '*herein granted*,' no more, none other) shall be vested (mark here again the language, not, shall by any future action be vested—for at once the question would occur, by whom, by what power vested; no, as I understand the language, and as interpreted by other parts of the same instrument as meaning, are hereby conferred, hereby vested) in a Congress of the United States."

It is presumed no man at the present day will controvert the position that all powers which can be constitutionally exercised by any department of the government are derived from, and must be granted by,

*Judge Patterson, of New Jersey.

the people, whom all acknowledge the original source of all power; and whose representatives, whether executive, legislative, or judicial, can exercise none which have not been delegated. The seventh amendment of the Constitutional so declares, "that in suits at common law, (which other clauses show is meant to distinguish between such actions and criminal prosecutions or suits in equity and admiralty,) where the value in controversy exceeds twenty dollars, the right of trial by jury shall be preserved, and *no fact tried by a jury* shall be otherwise re-examined in any court of the United States than according to the rules of the common law." Here, then, as well as elsewhere, the Constitution, in express terms, or by necessary implication, recognizes the common law in full force, notwithstanding the scruples of the solicitor.

The English language does not furnish terms more plain, expressive, and unambiguous. No exposition can illustrate them, no commentary can make them more clear. But what say the contemporary authorities? In the 80th number of the Federalist, General Hamilton, after expressing a great and fundamental political truth, for so it is now universally regarded, that "if there is such things as political axioms, the propriety of the judicial power of a government being co-extensive with its legislative, may be ranked among the number," uses this language in reference to that clause in the Constitution which declares that "the judicial power shall extend to all cases in which the United States shall be a party." Still less need be said in regard to this point; controversies between the nation and its members or citizens can only be properly referred to the national tribunals. Any other plan would be contrary to reason, to precedent, and to decorum."

Mr. Justice Story (38th ch. Com. on Constitution) employs language at least equally expressive and decided. It deserves to be quoted and remembered: "Every government must in its essence be unsafe and unfit for a free people where such a department (the judiciary) does not exist with powers co-extensive with those of the legislative department. Where there is no judicial department to interpret, pronounce, and execute the law; to decide controversies, and to enforce rights; the government must either perish by its own imbecility, or the other departments of government must usurp power for the purpose of commanding obedience to the destruction of liberty."

It is very clear, from the whole tenor of Mr. Justice Story's Commentaries, that when he speaks of the legislative power, he means to comprehend the whole power which, under our institutions, is entitled to make and ordain laws; of course, and of necessity, this would include the power of the people to form a constitution, for the provisions of such an instrument would override all others, even to the enactments of Congress. It must include the treaty-making power, for under the Constitution the treaties constitute the supreme law of the land.

The authority of the judiciary in our country is, therefore, in some respects more than co-extensive with those of Congress. If it pronounces an act of Congress to be unconstitutional, because it transcends the powers delegated to that body, that act is to every substantial purpose erased from the statute book. If it declares such act to

be in violation of a treaty, it can no longer be operative. The laws enacted by Congress can only be enforced and executed through the instrumentality of the judiciary; and the judiciary, when its powers are thus invoked, is authorized and bound to pronounce its judgment upon the validity of the law. No one dictum of wisdom is more deeply seated in a large experience than that of Montesquieu when he said: "There is no liberty if the judiciary be not separated from the legislative and executive power." "When power becomes right, it is of little consequence whether decisions rest upon corruption or weakness, upon the accidents of chance or deliberate wrong. In every well-organized government, therefore, with reference to the security of public rights and private rights, it is indispensable that there should be a judicial department to ascertain and decide rights," (Story, § 821.) If the great truths thus expressed by Montesquieu required endorsement, they could scarcely have found a more creditable and authoritative one than they have found in Story. According to the theory of our institutions, not only are the three departments of the government distinct and independent, each in its appropriate sphere; not only is the judicial power co-extensive with the legislative, but in some special instances it is above it. All our law does not emanate from the legislature. Beside and beyond the acts of Congress, we have a Constitution, which is of supreme authority, and has a controlling power over any act of the legislature. We have treaties, which are also paramount. Should there be any direct collision between a statute on the one hand, and the Constitution or a treaty on the other, the former must give way, and be declared of no efficacy.

We have seen that the Constitution expressly declares that the judicial power shall extend to "controversies to which the United States shall be a party," to "controversies between a State and citizens of another State," "and between a State, or the citizens thereof, and foreign States, citizens or subjects." In neither of these clauses is any distinction taken between a party plaintiff and a party defendant. In reference to some it is obvious that the language employed admits of no other interpretation than such as will equally comprehend both.

In *Martin* vs. *Hunter's Lessee*, 1 Wheat. 328, the Supreme Court says: "Let this article be carefully weighed and considered. The language of the article throughout is manifestly designed to be mandatory upon the legislature. Its obligatory force is so imperative that Congress could not, without a violation of its duty, have refused to carry it into operation." After an exposition and illustration of this doctrine, the Court (in p. 330) thus proceeds: "If, then, it is a duty of Congress to vest the judicial power of the United States, it is a duty to vest the *whole judicial power*. The language, if imperative as to one part, is imperative as to all." Again, p. 333: "It will be found that wherever a particular object is to be effected, the language of the Constitution is always imperative, and cannot be disregarded without violating the first principles of public duty; on the other hand, legislative powers are given in language which implies discretion, as from the nature of legislative power such a discretion must ever be exercised. It being then established that the language of this clause is imperative, the next question is as to the cases to which it shall apply. The

answer is found in the Constitution itself. The judicial power shall extend to all the cases enumerated in the Constitution." In his Commentaries on the Constitution, Mr. Justice Story reaffirms the same doctrine.

In the year 1792, an action was instituted in the Snpreme Court by CHISHOLM vs. *The State of Georgia*. It was an action of assumpsit, and brought under the consideration of the court the same clauses of the Constitution which have been cited, as well as some of the provisions of the judicial act of September, 1789. The case was argued *ex parte* by Randolph, the Attorney General, for the plaintiff, of course not in his official character, and the judges gave their opinions *seriatim*. The argument of Mr. Randolph, as well as the opinions of the judges, involve great and important principles, and well merit a careful perusal. With a single exception, the court was unanimously of opinion that the action might be sustained, on the ground that it was a case between a State and a citizen of another State, and that it was also embraced in the next succeeding clause of the Constitution, which gave to the Supreme Court original jurisdiction in cases in which a State is a party.

It is true, that some of the judges seem to have distinguished between the suability of a State and of the United States, not from any substantial difference in the phraseology of the Constitution in reference to these parties, respectively; but there was introduced, I believe for the first time in our history, the idea of the irresponsibility of the sovereign. This doctrine, since so widely entertained, owes its birth, I am fearful, to the judiciary branch of our government, and, as might have been anticipated, it was warmly welcomed and cordailly entertained by others. It is, however, not to be found either distinctly or by implication in the Constitution; it has not been so enacted by any statute. It originated in some *obiter dicta* in *Chisholm* vs. *Georgia*. Even in that case, however, Chief Justice Jay thus adverts to it: (2 Dall. 478.) "I wish the state of society was so far improved, and the science of government advanced to such a degree of perfection, as that the whole nation could, in the peaceable course of law, be compelled to do justice, and be sued by individual citizens. Whether that is or is not now the case, ought not to be thus collaterally and incidentally decided. I leave it a question."

I have thus traced the history of this doctrine. It has, I conceive, no foundation in the Constitution; on the contrary, it would seem to be in direct collision with the language of that instrument; it is not found in any statute; and I shall now proceed to show that, so far as it can be applied to the present case, it can derive no countenance from that quarter; it cannot find room to plant a single root in the common law, as that law was understood and settled when our forefathers planted themselves on this continent, and claimed as their inalienable right the heritage of the common law. I may be permitted to add, that some few years since, my friend, Mr. Rockwell, an able and leading member of Congress, deriving his information from the most authentic sources, showed that there was not a potentate in Europe, despotic or constitutional, who exercised or claimed this exemption from suability.

Before leaving this fundamental law of the Constitution, it may be remarked, that the decision in the case of *Chisholm* led to the 11th amendment. This, it will be perceived, is couched in terms similar to those which are usually found in declaratory statutes. "The judicial power of the United States shall not be construed to extend," &c. It is supposed there can be no question as to the meaning of this amendment, however open it is to verbal criticism, so different from the language of the original Constitution. The language of that instrument was clear and precise, whatever niceties of distinction some modern geniuses have pretended to show.

It is however interesting to remark, that no declaration is made in this amendment, as to the responsibility of the United States to a suit in its own courts—a point expressly left open by C. J. Jay. Nor is the suability of a State in the courts of the Union denied or controverted, except in the cases specified in this amendment.

If we are allowed to indulge in speculations on the subject, the explanation of all this is apparent, and, may it not be added, confirms the interpretation we have given to the original Constitution. It merely annuls those clauses which empowered the judiciary to entertain suits in law or equity against one of the United States, "by citizens of another State, or by citizens or subjects of any foreign State." It in no manner suggests an alteration in the Constitution in any other case in which a State is to be voluntarily or *in invitum* a party. Nothing is said as to suits against the United States.

It occurs to me that a very plain and sufficient reason may be assigned for this distinction. In cases brought by sister States no objection is made to the adjudication by the federal tribunals; none where a foreign state brings the action. Yet, in both these cases, the terms of the Constitution indicate no difference as to whether the State is to be plaintiff or defendant; it is to be a party. When, however, the action is to be brought by private citizens or subjects, the jurisdiction is now abrogated. It is scarcely possible to find anything more conclusive to show that by the terms of the Constitution, as originally framed and promulgated, the word "party" meant party plaintiff or defendant.

It may further be observed, in relation to this change in the Constitution, that while all admitted, or at least no one authoritatively denied the propriety of submitting all questions between sister States, or between one State and a foreign state, to the judgment of a federal court, the jealousy of State rights would be unwilling to allow private individuals to compel the appearance of a sovereign State into a court of justice to answer.

It may likewise have occurred to those who originated and carried out this change in the Constitution, that the principal reasons assigned for the introduction of the original clause, was that assigned by Hamilton, in the passage already quoted from the 80th number of the Federalist: "Controversies between the nation and its *members or citizens* can only be properly referred to the national tribunals. Any other plan would be contrary to reason, to precedent, and to decorum."

It would seem perfectly clear, that if this principle be adopted or

recognized, that a citizen of one State could not sue the State of which he was a citizen in any other than its own courts, nor would there exist any ground upon which a citizen of another State, or the subject of a foreign country, should occupy a higher position.

While, however, this amendment thus was designed, so far, to change the original constitution in relation to claims against a State, brought by a citizen of a sister State, or an alien, it never contemplated an alteration of those clauses which gave to a sister State or a foreign state the right of resorting to a federal court to prosecute any description of right; and what it is equally important to observe, is, that this amendment does not purport to alter the pre-existing law, so far as it provided for the right of a citizen of another State, or a foreign subject to bring his action against a citizen in the federal courts.

It is impossible, therefore, to compare this amendment with the original instrument, without perceiving that it was not then supposed, or intimated in any quarter, that when the word party was used in the Constitution, it was designed, or supposed to be designed, in either of these clauses to embrace only party plaintiffs.

It may also be suggested as a reason why this amendment was introduced, that a very strong feeling of State jealousy existed; State pride might feel itself wounded by the sovereign power being compelled to appear before a tribunal which was, in some respects, at least in the estimation of some, a foreign one, at a great distance. The Supreme Court of the United States is not the national tribunal of Georgia or Massachusetts. It had not on its bench a citizen of each of the States. Be this as it may, the facts are certain: 1. That this amendment impliedly recognizes the construction we have given to the language of the original Constitution, that the word "party" is equally applicable to, and equally comprehends, a party plaintiff and a party defendant. 2. That while it restricts the original authority to sue a State as defendant in certain cases, it leaves that power untouched in other. 3. That it in no way inteferes with, or affects or modifies the clause which confers upon the judicial power jurisdiction over *all cases* without discrimination or distinction, in which the United States shall be a party.

Whence, then, is the prerogative exemption, claimed so earnestly by the solicitor, derived? It is not found in the Constitution; a fair interpretation of that instrument and of the 11th amendment repudiates both it and the construction upon which alone any plausible ground can be found for it. It is not in the common law, if the unanimous opinion of all the judges, and the final decision in the House of Lords in the time of William III, furnishes a correct exposition of that common law. If it is not to be found in any vague idea of sovereignty, for that we have shown, from the authentic history of England, the freeist, and Spain, one of the most despotic governments in Europe, never prevailed.

This last ground seems to be that upon which this exemption is usually asserted and claimed. Now, will our learned opponent inform us where this sovereignty is to be found under our republican institutions and written Constitution? Each of the departments exercises merely delegated powers. Neither can rightfully transcend

those powers which are conferred upon it, nor can all conjointly exceed the authority which has been vested in them. The 10th amendment is explicit on this point: "The powers not delegated *to the United States* (including all its departments) by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people." No such exemption can be found to reside in the President, for, on Burr's trial, it was held he was subject to the process of even a *subpœna duces tecum*. Not in any of the heads of the executive departments, for in *Madison* vs. *Marbury*, in the trial of Smith and Ogden, and in *Kendall* vs. *United States*, it was held that they are amenable to the process of law; above all, each of them is liable to impeachment for official misconduct.

If the principles of our institutions are carefully and philisophically examined, any embodiment of sovereignty recognized by them will be found to reside, and to reside only, in the people. The federal Constitution and every State constitution is the creation of their hands, is an emanation from them, and amounts to nothing more than a partial and restricted delegation of certain specified powers, distributed among the various agents, all limited by the terms of the grant.

These principles, it seems to us, are confirmed by a reference to the various statutes of the United States, to some of the provisions of which I shall now ask the attention of the court. 1. The first to which reference will be made is the judicial act of September, 1789, 1 Stat. 70. The 13th section provides that the Supreme Court shall have exclusive jurisdiction of all controversies of a civil nature, where a State is a party, except between a State and its citizens, (for that is not embraced in the Constitution,) and except, also, between a State and citizens of another State, or aliens, in which latter case it shall have original, but not exclusive jurisdiction, &c. It then provides for the cases of ambassadors and consuls, in which they may be either plaintiffs or defendants. It proceeds to vest the authority in the Supreme Court to issue certain writs or process, among which is expressly mentioned the writ of *mandamus* to persons holding office under the authority of the United States. This last was held, in *Marbury and Madison*, to be beyond the power of Congress to grant, and the clause was therefore held to be unconstitutional and nugatory. It cannot escape observation that no distinction is attempted to be drawn between party plaintiff and defendant in these provisions. Indeed, in the case of ambassadors, &c., such distinction is expressly repudiated.

The 11th section relates to the circuit courts. This section provides that the circuit courts shall exercise jurisdiction, concurrent with the courts of the several States, of all suits of a civil nature, at common law, or in equity, where the United States are plaintiffs or petitioners, or an alien is a party, (not plaintiff or petitioner,) or the suit is between a citizen of the State where the suit is brought and a citizen of another State. This enactment shows throughout that the term "party," in the Constitution, equally comprehends plaintiff and defendant. The 12th section authorizes the removal from State courts of cases in which, under the Constitution, the defendant was entitled to have his rights adjudicated in the federal courts.

The validity of these provisions has never been controverted; and it

is only in cases in which the United States would occupy the position of a defendant, that any restriction has been supposed to be justified upon the otherwise acknowledged general meaning of this word "*party.*"

If the matter were to rest exclusively upon the provisions of this statute—although we might concur in the language of the Supreme Court, and of Judge Story in his Commentaries, that Congress had been guilty of a palpable violation of the Constitution in not vesting in courts the entire judicial power—yet there would be at least plausibility in the ground that, inasmuch as such power was not in terms vested, no court of the United States could rightfully exercise original jurisdiction over an original suit brought against the United States. That such jurisdiction might constitutionally have been vested, we think, cannot admit of a doubt; that if embraced within the terms of the Constitution, it was a peremptory and mandatory injunction of the Constitution upon Congress so to vest it, we have the high authority of the Supreme Court and Mr. Justice Story in our favor. It must, at all events, be conceded that if, thus far, we are right in the construction given to the Constitution, although there be no express provision in the judicial act of 1789 conferring this particular jurisdiction upon the circuit courts, yet we have every reason to apply those principles which we have expounded to the illustration and exposition of the statutes which have been enacted.

For instance, the 34th section of the judicial act, 1 Stat. 92, contains a provision, that the laws of the several States, except where the Constitution, treaties, or statutes of the United States shall otherwise require or provide, shall be regarded as rules of decision in trials at common law, in the courts of the United States, in cases where they apply. The Supreme Court has, on various occasions, expressed its anxiety and earnest wish to conform to this requirement of the law. In *McLuny* vs. *Silliman*, (3 Peters, 277,) they recognize the State statutes of limitation. In *Wayman* vs. *Southard*, 10 Wheat. 1, and particularly pages 22–'3, &c., this question was pretty fully discussed. This case referred to, and relied on by the learned solicitor, will, on examination, be found to sustain many of our positions. It has been so sufficiently commented on by my associate as to dispense with the necessity of any further comments from me.

March 3, 1797, an act of Congress was passed (1 *Statutes*, 512) with this title: "An act to provide more effectually for the settlement of accounts between the United States and receivers of public moneys." The case of *United States* vs. *Wilkins*, (6 Wheat., 135,) in 1821, presented some interesting questions under some of the provisions of this statute, and has ever been regarded, as to the points which it decides, a leading case. Mr. Justice Story, in p. 144, says: "The object of the act seems to be, to liquidate and adjust *all accounts* between the parties, and to require a judgment for such sum only as the defendants in equity and justice should be proved to owe to the United States." Similar language has been uttered from that bench in other cases.

The 4th section provides, that "in suits between the United States and individuals no claim for a credit shall be admitted upon trial, but

such as shall appear to have been presented to the accounting officers of the treasury for their examination, and by them disallowed in whole or in part, unless, &c.

The true extent and significance of this section does not appear to have been heretofore judicially examined. It does not, in terms, confer the right of set-off, as against the government. It assumes that such a right exists. It limits and restricts it in some important respects. At common law no right of set-off existed. Where the defendant had a counter claim against plaintiff, his only recourse was to chancery for relief. (2 Burr., 826.) The whole privilege, if it may be so called, was conferred by statute, and as Lord Mansfield says, (2 Burr., 825,) "since these two very beneficial acts of 2 G. II., c. 22, and 8 G. II., c. 24, stoppage or set-off of material debts is become equivalent to actual payment, and a balance shall be struck, as in justice and equity it ought to be." This point has been pressed by the solicitor, and we concur with him as to the law.

6. Bac. Abr., Gw. edit., 135, it is further said, that where a set-off is admissible, the parties are alternately plaintiff and defendant; so that, if the cross demand, or any part of it, be within the statute of limi tations, that objection may be replied, as it may be pleaded in bar to it.

The statute of 2 Geo. II., c. 22, § 13, expressly provided, "that where any such debt of the plaintiff, his testator or intestate, is intended to be insisted on, or evidence, notice shall be given of the particular sum or debt intended to be insisted on, and upon what account it became due, otherwise such matter shall not be allowed in evidence upon the general issue."

Such, then, was the law on the subject of set-off in England, such as Lord Mansfield says justice and equity required it should be.

It was with all these lights of the law, and under the dictates of honesty, that the act of Congress of 1797 was framed. The 4th section, while providing a special mode of giving notice of the proposed set-off, requires that the claim should be presented to the accounting officers of the treasury. Assuming the right of set-off to have a foundation in justice and equity, to use Lord Mansfield's expression, it does not limit that right to the direct concerns of the citizen with the particular department with whom he had immediate business transactions, or restrict his right to claims growing out of such transactions. Any and every claim against the government, no matter in what department it occurred, however remote; no matter whether founded on the most rigid technical principles of the common law, or on the more liberal and enlarged views of equity, all *just*, *righteous*, *equitable claims* might be exhibited and passed upon by court and jury.

The case of *United States* vs. *Wilkins* recognizes another principle of importance in this case, (p. 145.) It is said: "independent of any statute provision, the defendant would have a right to show that he had accounted for the value of such advance by delivering the equivalent provisions for which it was made."

It seems, therefore, that it is now the settled law, that—

1st. Independently of any statutory provision on the subject, the citizen when sued by the United States has a right to contravene every item of charge against him which may be presented, by showing

that in its inception it constituted no legal ground of debit; that on the trial it is not sustained by competent or sufficient evidence, or that it has been paid or otherwise legally satisfied.

2d. That the 4th section of the act of 1797 does not profess to confer any original right of set-off. Such right is recognized as a subsisting one; the restriction, as to the previous notice to be given to the accounting officers, is equivalent and tantamount to the obligation imposed by the stat. of George II., which requires such previous notice to be given to plaintiff, and nothing more.

3d. In one particular it enlarges the previously existing right, for, as is said in *United States* vs. *Wilkins*, "*the object of the act seems to be to liquidate and adjust all accounts between the parties.*" And again: "If this be the true construction of the act, which we do not doubt, the defendant might well claim a credit in this suit for the sums due him, even if they had grown out of distinct and independent transactions, for he is legally as well as equitably entitled to them."

It must also be observed, that this section contains no one word *limiting the nature or the extent of the credits* which defendant is entitled to exhibit. Not a syllable is to be found which confines these credits to the mere amount of the demand against him. The only restriction which is to be found in the statute is the requirement we there find—the single one, that the claim should previously have been presented to the accounting officers, and by them disallowed. To introduce another and wholly different limitation is to usurp legislative, and not to exercise judicial power; and this also, at least, a questionable exercise of even legislative power.

It has already been observed, that there is no statute of the United States which creates or confers the right of set-off; it is only recognized as a right. Yet this right did not exist at the common law, and is wholly the creature of statute. Where, then, are we to find the statute law on this subject? The answer is, nowhere, unless we are to look for it in the statutes of the State in which the circuit court sits, in which the United States has brought its action. The laws of that State furnish the *lex fori*, the rule of decision, by the express terms of the judicial act. After the full exhibition of the law of Pennsylvania on this subject, I have nothing further to say, than that the direct application of that law and its controlling influence over the case was recognized throughout on the trial of this case in 1841 by counsel and court. Nor can it be doubted that, if error had been committed in this respect, that point might readily have been brought before the Supreme Court for review on the writ of error. No such error was, however, assigned; no reason for a new trial suggesting it was ever presented. Such an acquiescence in the judgment of the circuit court is, we submit, such as to make that judgment conclusive on all the points decided, especially so vital a one as this upon all parties.

While adverting to this law of Pennsylvania, it will not do to pass by the remarks which the solicitor has made in reference to it. He has cited a report from a committee of the House of Representatives, made by Mr. Wilkins, a member of that House and of that committee, on this very case. No man more highly appreciates the character and standing of Mr. Wilkins as a gentleman than I do from personal

acquaintance, but I have never heard that he occupied a high position as a jurist. There are many inaccuracies of fact as well as law in that report. I have already shown that it only so far met the concurrence of the House as to discharge the committee from the further consideration of the case; but that it showed its non-concurrence in the views which it presented, by immediately referring the whole subject to a select committee. The solicitor, however, refers to an authority cited by Mr. Wilkins, where reported he does not say. The case of the Commonwealth *vs.* Matlock will be found reported in 4 Dall. 303. It was a suit to bring defendant to account for a sum of money which, as clerk of the senate of Pennsylvania, had been placed in his hands as a fund to defray the contingent expenses of the house. The defendant refused to exhibit his vouchers, unless they would allow him *a certain retrospective* compensation, to which he claimed he was entitled under an act of 1794.—(See the case as briefly reported.)

How far this case bears upon the present question I submit to this honorable court.

These points, however, present themselves to my mind:

1. There was no law in Pennsylvania authorizing offset against the commonwealth in a suit brought against it, any more than one to authorize a suit originally to be brought by the citizen against the commonwealth. The case in this respect is different. The solicitor has himself shown, that when the United States become the parties to a negotiable instrument, they incur all the obligations of a private citizen. Several cases, among which I shall only for the present advert to the case of the Bank of the United States vs. Osborn, in 9 Wheaton, in which it was held that, although you could not immediately sue a State, you might prosecute the case against the State treasurer, holding in his hand the moneys belonging to the State, or claimed by it; and because the State was not the immediate party on the record, though ultimately responsible, the action might be sustained. How far this case sustains the solicitor in his argument I submit to this honorable court.

So in the case of the *United States Bank* vs. *Planters' Bank*, 9 Wheat. 904, one of the questions presented was this: whether, inasmuch as the State of Georgia was one of the corporators, the action could be maintained, notwithstanding the 11th amendment. In deciding this question the court says: "It is, we think, a sound principle, that, when a government becomes a partner in any trading company, it divests itself, so far as concerns the transactions of that company, of its sovereign character, and takes that of a private citizen." "The government of the Union held shares in the old Bank of the United States; but the privileges of the government were not imparted, by that circumstance, to the bank."

The act of March 3, 1825, (4 Stat. 102,) confers very great powers on the Postmaster General. The 1st section, and the 4th, indeed, subject the entire department to his control. The 20th makes all deputy postmasters and other agents accountable to him; 31st, all suits to be brought by him. The 38th contains a singular provision in reference to claims against the post office, varying materially from the act of 1797. No express right of set-off is even now conferred,

but its existence is clearly implied. The party having such a claim, which has been presented to the Postmaster General and disallowed, and making affidavit to that fact, is entitled to a continuance. It was under this act, and during its continuance, that all the transactions between Reeside and the department occurred. This statute must furnish the standard by which his rights, his duties, and responsibilities, are to be measured.

Then came the act of July 2, 1836, which, as Judge Baldwin remarked, was prospective in its terms and objects, and was designed to operate upon future transactions, and which cannot be construed to diminish pre-existing rights. The only material changes which it effects, so far as we are at present concerned, were to change the mode of accounting. Formerly, the accounts between the department and deputies, contractors, &c., were kept in the name of the Postmaster General—henceforth they are to be in the name of the United States; anterior to this date, all suits were to be brought in the name of the Postmaster General. It can hardly be even suggested that this in any measure or to any degree varied the rights of Reeside. The act of 1825, as we have seen, speaks of claims against the department, and against it only. They may be brought forward without limitation as to extent. But it narrows the right conferred or recognized in the act of 1797, by restricting the counter claims to such only as grew out of transactions with the department itself.

Then comes the act of 1836, changing the law, as already noticed, and further modifying the right of set-offs. The 15th section applies to suits brought under this act the same provisions which are found in the act of 1797. Now, in no one of these several statutes is any limitation expressed or implied as to the amount of the credits, as they are termed in the first and last, or *claims* as they are called in the act of 1825. The narrow, forced, and unnatural construction which has been suggested, that the word *credits* ought to be restricted to such and to such only as will merely extinguish the demand of the plantiff, has not the faintest shadow of color in the act of 1825, under which our rights accrued, in the language employed, or in justice and equity. To apply it to either of the others would seem to involve a palpable absurdity. Imagine, for instance, a suit brought to recover a claim for $1,000: defendant claims a credit—one single item, established by the most solemn and conclusive evidence—it amounts, however, to $10,000. We will say it arises upon a bill of exchange, on which the government is responsible for that sum. What is to be done with it? The jury is bound to decide upon the issues joined; the court is bound to allow the evidence to go to the jury. It is a unit, a single piece of written testimony; if valid, it is valid throughout, to every extent. Oh, no! says the learned solicitor—it is competent for court and jury to find, upon this issue and upon this evidence, to the value of $1,000; all beyond is extrajudicial and extraneous—it would be authorizing a suit against the government. What, then, is to become of the $9,000? I will answer: That should be the result which the law authorizes—which was done by Kendall in the case of Stockton & Stokes—which justice imperatively demands—a credit should forthwith be entered on

the books of the department; and the balance, thus ascertained, be promptly paid.

It is insisted, that to allow such a verdict and judgment to be available as evidence of governmental indebtment would be to authorize a suit against the government. I answer, there is no law, no constitutional principle, which limits the extent or the nature of the evidence to sustain a claim against the government. The bill of exchange was evidence, but its genuineness may have been disputed; the handwriting of the drawer or endorsers may have been questioned by the accounting officers. Those matters have now been settled by a court, before which the government has brought the defendant. Is not the verdict and judgment evidence of the facts which were before in contestation? Does the bill of exchange still stand, with all the objections and doubts which before existed, either in the honest judgment or in the mere perverse imagination of the accounting officer resting upon it; or are not such verdict and judgment competent and conclusive evidence against them?

It is really wonderful to my mind that, at this time of day, before a judicial tribunal, a question could be raised on such a point. If, on general principles of law, of justice and equity, a doubt could exist in the mind of any jurist, and that doubt should rest upon the assumption that a government could not be sued without its formal assent, I should unhesitatingly submit that, by the very statutes authorizing the defendants to claim such credits, Congress has expressly consented to the legal and necessary consequences of allowing a defendant to exhibit such claims or credits, for a court to receive them, for a jury to hear evidence upon them, and to decide them by its verdict. Is it possible that when the learned solicitor pressed as he did his argument, that the government could not be sued without its consent, that every set-off was in its very nature substantially a suit against the plaintiff, that he did not perceive the inevitable result and consequence of this argument to be, that the government, by allowing such offsets, such actions against it, did expressly authorize itself to be sued? To my apprehension this conclusion is as plain as any syllogism in logic. If the solicitor is right in his positions, can a more distinct and explicit consent be either implied or expressed than we find in these acts of Congress? They do not profess to confer upon every individual the right to initiate a suit against the government, which under the Constitution clearly might have been done; but they do, in the most express way, in terms as plain as our language furnishes, exert their constitutional power to a limited extent, and in favor of a particular class of its citizens, by empowering such as the government shall think proper to sue for the recovery of an alleged debt to bring what the solicitor calls their cross actions against the United States, and this without limitation or restriction as to the amount of such counter claims.

The preamble to both the statutes of 1797 and 1836 is strongly confirmatory of these views. Both profess in their titles that their object and design is to adjust and liquidate the accounts between the government and the citizen. On more than one occasion the Supreme Court has said the professed object is to adjust and settle *all such accounts*. It

is impossible to settle *all such accounts*, unless the items on either side are examined and adjusted; unless, after such examination, a balance is struck, and the indebtment on the one side or the other ascertained; if in the accounting departments, well; if in the courts of the United States, more conclusively, if not more satisfactorily.

In the remarks which I have submitted to the consideration of the court, however desultory and discursive they may have appeared, I have endeavored to keep within the exact bounds of a reply to the arguments of my friend, the solicitor. It had been my expectation that he would have presented other points, upon which it would have been incumbent on me to animadvert. As, however, he has not chosen to exhibit them, I shall submit the case to the court upon the arguments of my very able and learned coadjutors. One of these subjects was that of interest. Had the solicitor raised any objection on this point to our claim, I was prepared to show that, by the decisions of the executive departments, of the judiciary of the United States, and of the State of Pennsylvania, interest on the amount certified by the jury is just as true, just, and equitable an item of charge against the government as any other.

But the argument of the solicitor raises no such question. By not controverting, he concedes it. My own powers are too much exhausted by the time I have felt myself compelled to occupy, and that of the court at least as much by the argument addressed to it, that I shall submit, unless further requirements are made on me, the whole case to the decision of the court.

IN THE UNITED STATES COURT OF CLAIMS.

Mary Reeside, executrix of James Reeside, deceased, vs. *the United States.—Argument in behalf of the claimant, by Charles Naylor.*

May it please your honors:

Few causes have been presented for the determination of a court of justice, supported by abler or more elaborate arguments than the one which has, for some days, been occupying your attention. These arguments are in print, (I mean, of course, the arguments of my colleagues,) or will be so, before you finally adjudge the case. That of Mr. Stewart, to which you have listened for the past two days, may claim the dignity of a treatise by itself on all the constitutional and elementary principles applicable to the matter in hand—is intended, by a recurrence to the fundamental principles of right and their constitutional and other sanctions, to meet and overthrow those lately-revived and hideous dogmas of tyranny by which sovereignty seeks to shield itself from responsibility, law, and justice, and by which the just claim of Mary Reeside has hitherto been insolently and wickedly repelled.

In my judgment, the argument of Mr. Stewart forms the most valuable and comprehensive treatise on the great subjects which it treats of, anywhere to be found. I need not say how much honor it does to

his ability and public spirit, and how forcibly it evinces his capacity for sound, comprehensive thinking, and for research protracted, patient and laborious, till the object at which he aims is attained or his materials exhausted. It also evinces his stern hatred of injustice and tyranny, his love of liberty and liberty's sanctions, and his determination to arraign, through the courts of his country, and hold up to the execration of his countrymen, those principles of despotism which a long career of prosperity has not only caused us to look upon as rather slightly than offensive, but which sycophancy and time-serving servility have at length brought forward as essential elements of republican liberty.

His speech, therefore, serves the double purpose of vindicating the rights of Mary Reeside, in the case before you, and of maintaing those of all others, now and forever, which are sought to be defeated by a like exercise of unscrupulous power.

Judge Robertson, of Kentucky, one of the ablest jurists of the country, has also submitted his printed argument, which your honors will find upon your bench, and which (as he is not present) I commend to your attention as one of great and conclusive merit.

Besides these, my honored and distinguished colleague, Mr. R. S. Coxe, who has so long illustrated the bar of his country's great National Metropolis, and who has been in this case from the beginning of its history, and therefore may be deemed almost a part of it, has reduced to writing the argument upon which he will conclude the cause in behalf of the claimant.

This argument has been read to me, and I may be pardoned the remark, that it is worthy of the reputation of its distinguished author. It will be read to your honors and then printed. It covers (with great force and clearness, and in chaste and and noble eloquence) the whole cause, in all its details, gives its history, and cannot fail of itself to remove any difficulty that may possibly be found in the way of the claim, should any exist, which, I confess, in justice, I cannot see.

Thus having before me, on the part of the claimant, all that is in print, and Mr. Coxe having done me the honor to read me his written argument, I see the entire ground covered; and find no part, in this interesting cause, left for my consideration, unless it be the presentation of a single point.

And permit me to say, that notwithstanding the cause has been, in its elementary principles, so fully and elaborately discussed, and is, pre-eminently the cause admitting such a discussion; yet it strikes me that it is capable of presentation in a very brief compass. The whole case, if I am not mistaken, may practically be considered under its different aspects, in connexion with all the laws and principles which rule it, as a mere question of EVIDENCE. As such I will briefly present and discuss it, though I fear it will be done but bunglingly, as I have but determined upon it this morning, and have not had the time to arrange notes or array authorities.

Claim.

Mary Reeside, (whose petition I had the honor to read to you in the opening of this case,) an aged lady, widow and executrix of James

Reeside, deceased, a great public servant and benefactor, who did as much for the spread of civilization, primarily, as ever did any other of the distinguished citizens of our country, appears before you and makes claim for a debt which she alleges the government of the United States owes to her testator. In a word, she claims that the government of the United States owes to her, as the representive of James Reeside, deceased, a judgment or "debt of record" amounting to $188,496 06
Together with interest on the same, to be calculated from the 6th of December, 1841, till the time of payment
And also with costs of suit - - - - - - -

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Statement and Evidence.

In support of her claim, and as evidence unanswerable and conclusive in this case, she presents you a copy of the record of the circuit court of the United States for the eastern district of Pennsylvania, duly certified and authenticated, by which it is shown that in a suit in said court, and of which said court had jurisdiction, instituted by the United States, for the specific purpose of settling mutual accounts between the parties—in which the United States were plaintiffs and said Reeside was defendant—a verdict was had and entered, after a laborious and scrutinizing trial, on the merits, protracted through six weeks, in favor of said Reeside and against the United States, on the 6th of December, 1841, for the amount of the principal of her present claim, viz. $188,496 06, and which verdict so entered of record became, on the instant, a "debt of record" for that amount.

It appears, also, by the said record, so certified and authenticated, that on the said 6th of December, 1841, a motion to show cause why a new trial should not be granted was made by the government's counsel; and on the 9th of December, three days thereafter, the reasons on which a new trial was sought were filed, which reasons are also set forth at large in said copy of the record, and allege—not that the defendant was not entitled to a verdict—no, but that the "*verdict for the defendant is for more than he was entitled to claim;*" that the said motion for a new trial on the 9th of May, 1842, was overuled after argument, the reasons for new trial dismissed, the verdict affirmed, and judgment entered thereon; thereby establishing the sum found by said verdict as a "debt of record" forever, unless the same should be set aside in due course of law by the Supreme Court of the United States.

It also appears by the record of the Supreme Court of the United States, duly certified and authenticated, and now presented to your honors, that on the 29th of July, 1842, (under a vague intimation of errors, though none were ever named, specified, or even definitely hinted at,) a writ of error was sued out by the United States in this case, and the record carried to the Supreme Court; but that the United States failing altogether to assign any errors, and to prosecute their said writ of error, it was dismissed by the said Supreme Court; that the judgment and verdict of the court and jury, in the circuit court of the United States, where the case was tried, thus stands doubly confirmed, now never to be disturbed as a "debt of record" due by the

United States, never to be discharged in law except by honest payment in full of principal, interest and costs, and never, in morals, except by meting out damages, approximating as near as possible towards a reparation for that irreparable distress and suffering, and wide-spread ruin, which such breaches of faith and disregard of right, so long persisted in, cannot fail to bring in their train.

In one word, stripped of the heart-aches of injustice, carrying James Reeside to his grave, and the inheritance of such heart-aches left by him to his widow, his family, his creditors, and by these latter to their families, and their creditors, the plain statment which I have thus briefly submitted to you is the case of Mary Reside, and the evidence by which it is supported.

The evidence thus submitted in support of this claim is, in legal character, the highest, and of import the most solemn and conclusive, known to the wisdom and moral intelligence of man. Such is its nature, that in the law and practice of all nations, and the universal instinct of mankind, (and as a part of the essential means of establishing and preserving that faith which binds the moral world together,) it ought not, in the judgment of the most enlightened jurists, be permited to be contradicted. It should command and control the faith of jurists and judges, and ought to be decisive of the case in every court where true civilization holds dominion. The import of such records cannot be resisted or contradicted in any court in christendom, without shocking, to a great extent, the grand sympathetic cord which joins and compacts together the world's code of faith and justice into one sensitive but unjarring unit.

Wheresoever justice sets up her tripod, such a presentation ought to stand sacred, as the evidence of a *thing adjudged*, which, to question or unsettle, is to restore the reign of "chaos and eternal night," and to fill the world with discord. In the courts of the United States, by and under the Constitution of the United States, such a record does stand thus sacred.

By the 1st section of the 4th article of the Constitution of the United States, and the act of 1790, and its supplement of 1804, for the authentication of records, made to carry the provisions of this article into effect, the copy of the record now presented to your honors is the evidence, and only evidence, that can be received by you in this case. Your honors are bound, by the most solemn obligatlons, to admit this record, and to receive it as evidence conclusive of the existence of this debt, and to say, (unless the government can show no such record as the one certified exists, or that the debt has been discharged,) that this debt is now due and owing by the United States, and ought, in law and justice, immediately to be paid.

Argument, Evidence, and Law.

Having thus stated the claim, and exhibited, almost in a word, the evidence by which it is supported, and referred to law, organic and statute, which makes that evidence conclusive—here, under ordinary circumstances, I might stop, and so far as I am concerned, submit the case to your honors' decision without further remark. But, as some

technical objections are interposed against us, and confusion, in other ways, attempted to be introduced, as a cloud under cover of which the absolutism of the United States seeks to shield itself from just responsibility, I will continue my brief statement, so as to cover, in a nutshell, the whole case—still confining myself, for all the facts with which I deal, to what appears upon the face of the record itself.

And, first, had the circuit court of the United States jurisdiction of the case, involving the issues submitted? and did the court proceed according to law?

Without wandering from the record, I will answer these questions, so far as they are material to be answered.

The suit was brought, under the 17th section of the act of the 2d July, 1836, (5 Statutes at Large, p. 83,) in the name of the United States, though on accounts for transactions previous to that time. Before the passage of this act, suits were brought in the name of the Postmaster General; so that the statute was made retroactive specifically for the case. The action was assumpsit, the declaration on the ordinary money counts, and the pleas non-assumpsit, payment, and set-off. Upon these pleas issues were taken, and by them, (under the law of the forum where the case was tried,) these issues required full, mutual accounting of the parties—each party being obliged to produce his whole account, at the peril of forever losing the portion not produced, and the jury sworn to render a verdict for the amount of the balance due either to the plaintiff or defendant upon such accounting. If either party failed, *under these pleadings*, to produce his whole account—no matter from what cause—he was forever thereafter barred from recovering it. Such was the law of Pennsylvania, where the case was tried; and, by the 34th section of the act of Sept. 24, 1789—the "judiciary act," (1 Statutes at Large, p. 92)—this law of Pennsylvania was made to rule the case. This section is in these words:

"That the laws of the several States, except where the Constitution, treaties, or statutes of the United States, shall otherwise require or provide, shall be regarded as rules of decision, in trials at common law, in the courts of the United State, in cases where they apply."

This statute so expressly and evidently embraced the case of the United States *vs.* Reeside, that it seems hardly necessary to refer to any decisions on the subject. Yet, for fear that it may be controverted, I refer your honors to the following cases: Weyman *vs.* Southard, 10 Wheaton's Reps., p. 5; McElmoryle *vs.* Cohen, 13 Peters, p. 312; and Conkling's Treatise, (edition of 1842,) p. 193; and see lists of authorities at the end of this argument.

The law of Pennsylvania, under which one of these issues was made and tried, that of set-off, under which the verdict was given for the defendant for the sum of $188,496 06, is the act of assembly of 1705, (to be found in Benjamin Franklin's edition of the Laws, page 88, 1 Smith's Laws, page 49, and Purdon's Digest, page 237.) The issue under this plea bound the defendant to produce and prove his whole account, or lose forever the part not produced and not proved.

The first section of this act of 1705, being the only part of it applicable to the case, is as follows:

An Act for Defalcation.

"*Be it enacted*, That if two or more, dealing together, be indebted to each other upon bonds, bills, bargains, promises, accounts, or the like, and one of them commence an action in any court of this province, if the defendant cannot gainsay the deed, bargain, or assumption upon which he is sued, it shall be lawful for such defendant to plead payment of all or part of the debt or sum demanded, and give any bond, bill, receipt, account, or bargain in evidence; and if it shall appear that the defendant hath fully paid or satisfied the debt or sum demanded, the jury shall find for the defendant, and judgment shall be entered, that the plaintiff shall take nothing by his writ, and shall pay the costs. And if it shall appear that any part of the sum demanded be paid, then so much as is found to be paid shall be deducted, and the plaintiff shall have judgment for the residue only, with costs of suit. But if it appear to the jury that the plaintiff is overpaid, then they shall give in their verdict for the defendant, and withal *certify to the court how much they find the plaintiff to be indebted or in arrear to the defendant, more than will answer the debt or sum demanded, and the sum or sums so certified shall be recorded with the verdict, and shall be deemed as a* DEBT OF RECORD; and if the plaintiff refuse to pay the same, the defendant, for recovery thereof, shall have a *scire facias* against the plaintiff in the said action, and have execution for the same, with the costs of that action."

Under this law, directed and advised by Judge Baldwin, (with whom was Judge Hopkinson, his distinguished associate,) of the Supreme Court of the United States, the jury, upon their oaths, on the 6th of December, 1841, rendered their verdict for defendant, and certified the sum of $188,496 06 as due him, which was recorded, and, on the instant, in the words of the law, became "*a debt of record*" for that amount.

This verdict covered the whole issue, and each of the issues. The issues involved the problem as to which of the parties was the debtor: 1st. Whether the United States had anything due them by the defendant; and if so, how much? And if nothing, whether the defendant had anything due to him; and if so, how much? These questions, thus raised fairly in law and in fact, by the issues, it was the province and duty of the jury, under the instructions of the court, to determine.

The act of 1705, before quoted at large, after premising, that if they (the jury) find, upon striking the balance of accounts between the parties, there be anything due to the defendant, says, "*then they shall give their verdict for the defendant, and withal, certify to the court how much they find the plaintiff indebted or in arrear to the defendant,* MORE *than will answer the debt or sum demanded; and the sum or sums so certified, shall be recorded with the verdict and shall be deemed as a debt of record.*"

Thus directs the act. Now, what is the verdict, as appears by the record certified before you?—"1841, Dec. 6. And now, the jurors aforesaid, on their oaths and affirmations aforesaid, respectively do say, that they find for the *defendant*, and certify that the plaintiffs are in-

debted to the defendant in the sum of one hundred and eighty-eight thousand four hundred and ninety-six dollars and six cents." And immediatly follows the entry "Judgment nisi."

How fully and exactly does this finding and certifying comply with, and answer the requirements of, the law; answering not only in substance but to the very letter.

The counsel of the United States being, at the time of the rendition of the verdict, in court, on the instant moved for a new trial, as appears by the record before you; and following immediately after the above extract, under date December 6, 1841, the record thus continues:

"On motion of Messrs. Reid and Cadwallader, for plaintiffs, for a rule to show cause why a new trial should not be granted, and for leave to move for such new trial, on exceptions to the ruling of the court, on questions of evidence and matters of law embraced in the charge of the court, without such motion being deemed a waiver thereof, the motion is received."

And on the 9th instant, three days afterwards, their "*reasons*" for a new trial, (certified at large on the record before you,) are filed. These reasons are twelve in number. These, as well as the terms of the motion, deserve your honors' especial attention. The motion itself, first, by its own legal character; and, secondly, by implication, recognizes the clear and unquestionable legality of the verdict then rendered, with the finding a sum certain as due the defendant. It refers its objections to the "ruling of the court on questions of evidence and matters of law embraced in the charge of the court." There is no pretence, in words or by implication, that the jury could not so legally find. Besides, if they had considered the finding of the jury as not upon the *real* issue joined, but in its essence illegal, because a sum could not be found as due against the United States, the error would have appeared on the record, and their motion would have been in *arrest of judgment*, and not for a new trial; or they would have taken some other step, showing that their objection was to the principle on which they found anything as due defendant—not that they found *too much;* for their motion recognized the jury's legal right thus to find.

As with their motion, so with their "reasons" for a new trial, filed under their motion, and in its support. They imply throughout that the jury could so find; and speak of the "*verdict*" in terms comprehending by it the *whole* finding of the jury, including as well the *certificate of the balance due for the defendant* as also the general finding in his favor, and in words evidently importing that such finding was considered by them as within the plain legal province of the jury and the court, and as a part of the duty of both, and made in pursuance of a duty which they were sworn to perform and could not throw off.

The 9th reason is as follows: "9th. The *verdict* of the jury in favor of the defendant is for *more* than in any rational view of the evidence he was entitled to claim."

Thus, in terms, recognizing the duty of the jury, not merely to give a general verdict for the defendant, but to name and render the amount found due him by the plaintiff; a duty not arising under some sharp,

subtile, technical rule of law, conformed to, merely to preserve the rule—no; but a duty—honest, plain, conscionable; spoken to them in plain speech; submitted to them by the government itself, in this very case, from the mouths of its own counsel—namely, the duty of finding the true state of the accounts between the parties, and rendering a verdict for the balance to the party in whose favor the balance appeared. And this duty was precisely the same duty which had been performed by courts and juries, in suits between man and man in Pennsylvania, for nearly one hundred and fifty years, under the same law, one of the oldest, wisest, and wholesomest on the statute book; and under which just such verdicts had been rendered by thousands, and tens of thousands, and, without a figure of speech, I may say, by the hundred thousand.

The complaint, then, of the government's counsel, as appears by the record, (for I follow the record,) was not that anything was given defendant by the verdict, but that, in their opinion, the amount given was *too large*, whilst the counsel for the defendant contended the amount to be *too small*.

The inference is clear from the facts on this record alone, aside even from anything appearing collateral to it, that the plaintiff's counsel were convinced that the defendant was justly entitled to a verdict for a large sum due in his favor, and their only objection to the verdict appears to be, that, in their opinion, the amount found was too large, though they did not specify in their reasons for a new trial, (probably, and it is to be presumed, because they could not,) one single item of his claim, which in their opinion was improperly allowed him, or one single item of the government's improperly disallowed.

I am pursuing this course of narrative to show you, that nothing in this trial is the result of surprise, or of mere technical intendment or operation of law; but that by the law, by the pleadings, by the issues expressly and mutually arranged for the purpose; by plain, honest, open speech, as unquestionable as the import of the monosyllables "yes" and "no," both parties, the government and the defendant, and the counsel of each, and all connected with them, as well as the court and jury—in a word, each and all, having any connexion with the cause, meant and intended that just such verdict and finding should be the result of the trial, if the facts submitted warranted such result.

This assertion, no living man, nor the spirit of any one dead, if such spirit could be tongued, can or dare gainsay.

May it please your honors: Every fact thus far referred to in my argument appears upon the *face of the record*, now certified and authenticated before you. This record imports absolute verity. No one can contradict it; no one pretends to contradict it. This, then, appears by it: the United States, by its laws made for the purpose—by its agents and officers appointed for the purpose, institute an action or suit at law in its own court, organized for the purpose, against one of its old and most faithful servants, for the purpose of settling accounts with him, exacting from him its own to the uttermost farthing, and allowing him and inviting him to claim and establish the debts due by it to him; thus making its own issues, and these issues being

the real, the true, honest issues; and by its own jury, assembled and sworn for the purpose, guided by its own judges, ascertains, fixes upon itself, and establishes as due by itself to James Reeside, a "debt of record," amounting to the sum of $188,496 06.

All this it has done on its *own* motion, using its highest intelligences therefor, and by *means* and tests the most perfect and unerring ever known to the wisdom of man. These *means* (the common law jury trial) themselves are deemed of import so sacred as to have been converted into great *principles*, ordained so essential and omnipotent for the assertion and security of human rights, (for effecting, in a word, just what the government effected by their use in this case,) as to be infixed in the organic framework of the government itself as a constituent element of its life, without which nothing valuable in our society could be preserved. By these *means*, then, consecrated in the Constitution to be held forever sacred and inviolable, as *the means* to be used for the purpose, "A DEBT OF RECORD" in favor of Reeside, against the United States, has been established.

I have shown you that the act of 1705, under which the finding was made, has declared, in technical words of precise and well-defined meaning, that the verdict of the jury in favor of a defendant, such as was rendered in this case, is "a debt of record;" and the supreme court of Pennsylvania, in Ramsey's appeal, (2 Watts, p. 231,) construing the act of 1705, declares the verdict to be "a debt of record," as do the whole course of Pennsylvania decisions, and the uniform practice of the courts of that State. Indeed, for many years the act was construed to make the verdict a lien on the real estate of the plaintiff, notwithstanding the *provision* that no execution should be had without first issuing a *scire facias* thereon. After the decision in Ramsey's appeal, however, which declared that, "though *a debt of record*," it was not necessarily a lien upon real estate, the legislature interferred, and by act of assembly of 11th April, 1848, (Pamphlet Laws of 1848, page 537,) enacted: "*That* in all cases where, by the verdict of a jury, any debt or damages *shall have been* found or certified in favor of the defendant, he shall be entitled to judgment and execution in like manner as if the verdict were in favor of the plaintiff, and the defendant need not resort to a *scire facias*, as required by the act of 1705 for defalcation."

So that now the verdict for a defendant is operative to all intents and purposes as fully as if given for the plaintiff; and it will be perceived, by the terms of this latter act, that the legislature evidently attempts to make the act *retroactive* to operate on the past, and to give to defendants, who had previously recovered verdicts, the same remedies as they would have had if their verdicts had been rendered for them as plaintiffs. This construction applies it to our case.

I hate technical formalities as much as I love substantial justice; and I do not wish to be understood as making the retroactive action of the act of 1848 a point in favor of the present case, for the case does not need it, (though the law applies to Reeside's case, and converts the verdict into a judgment;) but I state it only as I pass on to show the strong approving sense of the legislature of the wholesome working of the act of 1705—an act which has been so powerfully active for

good, particularly in settling accounts, (such as those between the government and Reeside—from the birth of Pennsylvania as a province down to this day. A more perfect means of adjusting and determining such accounts, preserving at the same time, in the ordinary and familiar course of law, the rights of all against errors, it would be impossible, it strikes me, for the wit of man to devise in a free government, where the laws, made to secure justice, ought to bear rule.

Proceeding one step further, let us inquire what is a debt of record? Blackstone, in the second volume of his Commentaries, p. 465, answers this inquiry thus: "A debt of record is a sum of money which appears to be due by the evidence of a court of record."

"These debts of record cannot be impeached or affected by any supposed defect or illegality in the transaction on which they are founded; and, if a judgment be erroneous, that circumstance will afford no answer to an action of debt upon it, and the only course for the defendant is to review it by writ of error. It is most clear," says Lord Mansfield, (in *Moses* vs. *McFerlan*, 2 Burr, p. 1009,) "that the merits of a judgment can never be overhaled by an original suit, either in law or in equity. Till the judgment is set aside or reversed, it is conclusive as to the subject-matter of it, to all intents and purposes." (See Ram on Legal Judgments, pp. 2 and 3; Saunders on Pleading and Evidence, pp. 748, 750, 751.)

A debt of record, if disputed, must be tried by "inspection of the record, (if the controversy be in the court where the record exists,) and by a certified copy of the record, if in another tribunal, and not by a jury of the country."—(Tidd's Practice, 6th edition, pp. 797-'8; and Mills *vs.* Duryee, 7th Cranch, p. 481 to p. 487.)

The *first* section of the 4th article of the Constitution of the United States provides that "full faith and credit shall be given in each State to the public acts, records, and judicial proceedings of every other State; and the Congress may, by general laws, prescribe the manner in which such acts, records, and proceedings shall be proved, and the effects thereof." The Congress have exercised the power vested in them by this article, by their act passed the 26th of May, 1790, (1 Statutes at Large, p. 122,) in which they prescribe "that the acts of the legislatures of the several States shall be authenticated, by having the seal of their respective States affixed thereto. That the records and judicial proceedings of the courts of any State shall be proved or admitted in any other court within the United States, by the attestation of the clerk and the seal of the court annexed, if there be a seal, together with a certificate of the judge, chief justice, or presiding magistrate, as the case may be, that the said attestation is in due form. *And the said records and judicial proceedings, authenticated as aforesaid, shall have such faith and credit given to them in every court within the United States, as they have by law or usage in the courts of the State from whence the said records are or shall be taken.*"

And by the supplementary act of March 27, 1804, (2d Statutes at Large, pages 298-'99,) it is declared that "all the provisions of this act and the act to which this is a supplement, shall apply as well to the public acts, records, office books, judicial proceedings, courts and offices of the respective Territories of the United States, and countries

subject to the jurisdiction of the United States, as to the public acts, records, office books, judicial proceedings, courts and offices of the several States."

Under this clause of the Constitution and the acts of Congress founded thereupon, it has been determined by the Supreme Court of the United States and by the supreme court of Pennsylvania, that a judgment in a court of one State or in any court of the United States which is a record in the State where *rendered*, has the force and *effect* of a record in every other State, and in every court in the United States.

Having therefore produced, properly authenticated, the copy of the record of our "*debt of record*," we present it to this court, which is a court of the United States, as evidence conclusive, and not to be questioned, of the existence of our debt of record, and ask as authority for the *effect* of this evidence, your honors' especial attention to the case of Mills *vs.* Duryee, 7 Cranch, p. 481, and that of Hampton *vs.* McConnell, 3d Wheaton, p. 234.—(See the opinions of the court in both cases printed in the appendix of authorities referred to in this argument.)

By the 4th article of the Constitution which I have quoted, and the acts of the authentication of records, made in pursuance thereof, and the decisions under them, your honors are bound. The court of claims is a court of the United States, and your honors have taken, before you could occupy the judgment-seat, as required by the fundamental law, your official oaths to support the Constitution of the United States. You are bound, therefore, equally with all the judges in all the courts of the United States, to support the fourth article of the Constitution and the laws made in pursuance of it, to respect the judgments and records of the other courts of the United States, and these judgments and records when certified and authenticated.

In the words of the Supreme Court, in the case of Mills *vs.* Duryee, you are not less a court because you cannot, by your organization, issue an execution. Nor is a "debt of record" less a judgment of a record, according to the decision of the same court in the same case, because an execution cannot be issued upon it.

Your honors are, then, to pay respect to the records of the circuit court of the United States, now before you, and give them the same *effect*, to all intents and purposes, as would be paid and given them in the courts of Pennsylvania where the proceedings took place, and where the debt of record was *rendered* and established.

And how would such a certificate of record be respected, and what would be its effect in Pennsylvania?

In Cardesa *vs.* Humes, 5 Sergeant & Rawle's Reports, p. 65, the supreme court of that State say, "that in no case, nor under any circumstances, can the merits of the original judgment be inquired into for the purpose of defence to a *scire facias*." * * * * * "In such a proceeding, you must deny the original judgment altogether, or show it has been satisfied since it was rendered."

If it should be denied, this would be by the plea of "*Nul tiel record*," and the answer would be made by the *inspection* of the record, or, as in

the present case, by a copy of the record authenticated under the Constitution and laws of the United States.

And so, in the case of Hood, Irvine & Co. *vs.* Kean, 11 Serg. and Rawle, pp. 292 and 293, the court say, "a judgment, while unaffected by any order of the same or a superior court, is conclusive, and, no matter, which might have been originally set up as a defence, can be pleaded to a *scire facias.*"

It would be an idle and wicked waste of time to multiply authorities upon this subject; the whole current of the decisions in Pennsylvania being in harmony with those above referred to, and showing that a judgment or matter of record, in a court of record of competent jurisdiction, cannot be inquired into or impeached in any collateral suit; that the record imports its own verity, and if impeached in the court where the record exists, it is evidenced by an *inspection* of the record; and if out of the court of the record, it is evidenced by an exemplification, or by the certified copy, authenticated under the Constitution and laws of the United States; and that the matters upon which the judgment was originally founded, or which might have been inquired into in the original suit, cannot be gone into, in any proceeding founded upon that record or its authenticated copy.

But the authority of a record of judgment has been carried much further than this in Pennsylvania, for now, by the act of assembly of 16th April, 1840, (Purdon's Digest, p. 463,) the original judgment may be transferred from the court of the county in which it is entered, to any other court of any other county in the State, simply "*by filing of record in said court a certified copy of the whole record of the case.*" By this act, without suit and without the intervention of the judges of the court, the clerk of any court is obliged to receive any certificate of record from another court in Pennsylvania, and file it and enter it of record in the court of which he is clerk. Whereupon, it immediately becomes a judgment to all intents and purposes, the same as in the court where originally entered.

However, the constitutional provision (which I have been discussing) on the subject of the effect to be given in one State to the judicial proceedings of the other States need not be invoked in this case. Without such provision the courts of the several States would have been *foreign* to each other. The *effect* of it is to make them *domestic* tribunals. The different federal courts of the United States—such as the circuit courts, and the court of claims—occupy this relation of *domesticity* towards each other, without such *constitutional* provision; and their records would have been and are everywhere receivable and authoritative as well without such provision as with it.

I have thus shown, by this authenticated record itself, without travelling out of it for a single fact or inference—please remember this—and without resort to technicalities, that the United States instituted this action for the purpose, in fact of settling this account with Reeside, and establishing and fixing the balance in favor of the party in whosever favor it might be found—that as the best means of doing this, they resorted to the court and jury, under the set-off law of Pennsylvania applied to the case, by the 34th section of judiciary act of 1789; that they never complained or pretended that the verdict

was a surprise, or did not answer directly the issue made in open, spoken fact, as well as in law; that they never complained nor insinuated that the verdict was not strictly honest, or that it was wrong in principle, by setting up the fallacious and monstrous pretence, that because they were infinitely powerful as sovereign, and Reeside infinitely weak as subject, therefore they could trample upon all right, and upon all means held sacred for many centuries for ascertaining and fixing that right; that they never told the crushed Reeside that they intended, by such a trial, only to betray him and to crush him still more; that they never told the learned and distinguished judges and the honorable, patient, and conscionable jurors, whom they forced to try the cause on the issues presented, after taxing their time and talents to the uttermost, for a period of nearly two months, that they were only playing the fool with them; that they, the United States, were infinitely powerful, and that, by the prerogative of infinite power, they would cease to be respected, if they were not infinitely treacherous, and infinitely disregardful of faith and fair dealing, when in connexion with the weak. They never, thank God! so said or so intended, as appears by this record.

John M. Reid and John Cadwallader, esquires, of the Philadelphia bar, who represented the government in this case, and who deservedly rank as among the foremost in an honorable profession to which they do honor, tried this cause, with a full knowledge and every day's experience of the issues they were trying and of the law of the forum applicable to them; and having openly, fairly, and honorably—and I have no doubt with distinguished ability—maintained the cause and the rights of the government till the verdict was rendered, and afterwards in their efforts to get a new trial, (by means in the ordinary course of the law,) never pretended, and never could pretend to question this verdict upon the extraordinary grounds now taken to destroy it. On the contrary, as I have before shown, their every movement and sentiment, as exhibited by this record, confirm the principle of the verdict. Having tried the cause fairly upon the very issues, and only issues to evolve its justice, they could not blot their professional honors and crucify their high instincts as just men, by any attempt to evoke from the gloom of the past any such hideous shape of despotism as is now sought to be conjured up and interposed to overshadow the right established by the trial, and defeat its enjoyment.

I believe, and avow before God, that the government is not now, and never was, rich enough to buy, or powerful enough to constrain, the distinguished jurists who tried this cause in its behalf, to move one step forward in any such tyrannical and unwarrantable course of proceeding. Though one of these gentlemen, Mr. Reid, sued out a writ of error at the instance of an officer of the government, and might, by a single line, have raised the question, it was not even hinted at by him or by any other person.

The fact appears to be, that some of the officers of the government, who knew nothing, and could know nothing about the matter, thought the finding of the jury was for an amount too large, and sought to get the verdict moderated in the ordinary course of the law. No one at that time seems even to have dreamed of an appeal to a principle sap-

ping and overthrowing the great foundations of justice, and which, to have then made, would have subjected all those concerned in this trial on the part of the government to the imputation of having acted with the basest treachery. For such a brand would necessarily follow those who, after forcing a tribunal to try, and a weak man to be tried by it, on finding themselves worsted, would coolly turn round and say to him and the court—"this was all a cheat on our part, for though the defendant's only course was submission, yet we had no rightful power to shape the suit so as to give him a hearing; the court had no rightful power to try and determine the issues framed for justice; and we, having been unexpectedly disappointed in the result, have come to the conclusion that the whole thing must pass for a cheat, having learned that in all cases where sovereignty is concerned the hearing must be altogether on one side, and that side its own!"

I declare before God and man, that any such course as I have indicated, which is now the course pursued by this government, would have stamped any man engaged in that trial, if pursued by him, with the brand of eternal infamy.

But I trust your honors will remember that the question which I now present in the main, and which I am thus so imperfectly attempting to argue, is a question of EVIDENCE—my ground being that the claim is for "*a debt of record*," and to be proved and *evidenced* to you as is a debt of record.

That it is "*a debt of record*" was certainly the opinion of Judge Baldwin, before whom the case was tried, as is clear from the whole course of his opinion given in the overruling of the motion, and the dismissing of the reasons for a new trial. It is evidently treated and considered as such by the Supreme Court of the United States in the case of *Reeside* vs. *Walker*, (11th Howard's Reports, page 272)—a case which I have no doubt will be invoked against us by the solicitor; but one which, if judiciously examined, will be found to be altogether in our favor. The opinion in that case was delivered by Justice Woodbury. The case arose upon an application (very injudiciously made, in my opinion) by Mary Reeside to compel, by mandamus, the Secretary of the Treasury to pay her the amount of this verdict, calling it a *judgment*.

It is clear that the court had no such power to do such thing in this case, and that, and only that, is the thing decided by the court. Yet, throughout the whole opinion of Justice Woodbury, in his reasoning upon the subject, he recognizes the verdict in this case as "*a debt of record*."

In his reasoning in this case, (for he had before admitted that, as private rights were involved, the 34th section of the judiciary act of 1789 had made the law of the State the law of the forum ruling the case,) he says—I read from pages 288, 289—that

"In a case like this, in Pennsylvania, where a set-off is pleaded and a balance is found due to the defendant, the judgment entered, if well proved by such minutes, is not, as the petitioner supposes, that the United States was indebted to Reeside in the amount of the verdict and should pay it; but it merely lays the foundation for a *scire facias* to

issue, and a hearing be had on that if desired.—(Penn. Laws, by Dunlap, ch. 20, § 2.)

In this interpretation of the law of Pennsylvania, if the judge intends to say that there can be a hearing on the merits, on the *scire facias,* he is mistaken. The whole matter is settled and finally fixed by the *verdict*, and no hearing can be had on the *scire facias*, except it be on the allegation that there is no such record, (which an *inspection* of the record would instantly disprove,) or by showing that the verdict had been paid since it was rendered. It is, to all intents and purposes, a judgment, except it is no lien, and no execution can issue. Judge Woodbury then proceeds to say, in the same case:

"The petitioner and her husband have neglected to pursue the case in that way to a final judgment, and hence have offered no evidence of one, on the verdict of indebtedness to Reeside by the United States. The judgment, so far as regards that action, would be, when no *scire facias* was sued out, that the defendant go without day; and so these minutes should be drawn up, when put in a full and due form.

"In Ramsey's Appeal, 2 Watts, 230, Ch. J. Gibson explains this fully. 'The reference,' says he, 'was under the act of 1705, by the first section of which the jury are directed, when a set-off has been established for more than the plaintiff's demand, to find a verdict for the defendant; and withal certify to the court how much they find the plaintiffs to be indebted or in arrear to the defendant. The certificate thus made is an appendage to the verdict; but no part of it or of the premises on which the judgment is rendered; for the judgment is not *quod recuperet,* but that the defendant go without day. On the contrary, it is expressly made a distinct and independent cause of action by a *scire facias;* and though *a debt of record*, it is not necessarily a *lien*, as was shown in Allen *vs.* Reesor, 16 Serg. & Rawle, 10, being made so only by judgment on a *scire facias.*'"

Here your honors will perceive Judge Woodbury adopts, as the ground of his reasoning and his faith, and quotes at length, the opinion of Judge Gibson, of Pennsylvania, adopting his language, declaring that this verdict is "*a debt of record,*" though not a technical judgment in form, binding real estate as a *lien;* and he concedes throughout that the law of the forum rules the case, and he intends to adopt Pennsylvania law.

And I have shown your honors, by decisions before quoted in this argument, from the same Judge Gibson, that *substantially* this verdict, or *debt of record*, is a judgement, the merits of which cannot be inquired into in issuing the *scire facias* upon it, any more than if it had been entered in technical form. Like a judgment, it is "*a debt of record,*" evidenced only by an *inspection of the record*, or by exemplification or certificate, and not to be questioned or impeached by any other means than those required to question or impeach a judgment. And in the very case (Ramsey's appeal) from which Judge Woodbury makes his extract, Judge Gibson says, that the verdict for a defendant is so substantially a judgment, that it is difficult to discover why our ancestors in 1705 enacted that a *scire facias* should be issued upon it at all. And Judge Gibson, in delivering the opinion of the court in "Dougherty's estate," 9th Watts and Sergeant's Reports, p. 195, says

that this *scire facias* is "only a judicial writ, is no new suit, but a mere handmaid in the original cause, and a step towards execution." I have before shown that shortly after this decision, the legislature interfered and passed an act making the verdict for a defendant the same as for plaintiff.

Judge Woodbury goes on to say, in the same case, page 289: "The gist of the prayer for a mandamus fails; because, though this application is in form against the person who was Secretary of the Treasury November 4th, 1848, yet it is to affect the interests and liabilities alleged by the plaintiff herself to exist on the part of the United States. Furthermore, the *judgment* sought to be paid is one rendered in *form*, as well as in *substance*, against the United States."

Thus, he appears to pursue the same technical idea, drawing the distinction between a *formal* technical judgment and a *substantial* verdict, for a sum certain; which, though "*a debt of record*," does not constitute a *technical* judgment on which he could, if it were otherwise proper, issue his *mandamus*. And he adopts throughout, in his reasoning on this subject, the law of the *forum*, as laid down by Judge Gibson, of Pennsylvania, as the law which determines what this verdict is. And this law of the forum adopts it as a debt of the highest character, forever firmly established, never to be got rid of but by payment.

Hence, again, in another paragraph, on the same page, he says, as a reason for refusing the mandamus—"Here, as no *judgment* of indebtedness existed against the United States, the whole superstructure built on that must fall."

And then again, on page 290, he says: "But the difficulty in the way is the want of any appropriation by Congress to pay this claim. It is a well known constitutional provision that no money can be taken or drawn from the treasury, except under an appropriation by Congress. (See Constitution, art. 1, sec. 9, 1 Stat. at Large, 15.) However much money may be in the treasury at any one time, not a dollar of it can be used in the payment of anything not thus previously sanctioned. Any other course would give to the fiscal officers a most dangerous discretion.

"Hence, the petitioner should have presented her claim on the United States to Congress, and prayed for an appropriation to pay it. If Congress, after that, make such an appropriation, the treasury can, and doubtless will, discharge the claim without any mandamus. But without such an appropriation, it cannot, and should not, be paid by the treasury, whether the claim is by *a verdict or judgment*, or without either, and no mandamus or other remedy lies against any officer of the Treasury Department, in a case situated like this, where no appropriation to pay it has been made. The existence of this other and ordinary mode of redress, by resort to Congress, may be another reason against a mandamus, as that lies only when no other adequate remedy exists. Marbury *vs.* Madison, 1 Cranch, 62, 137; Kendall *vs.* United States, 12 Peters, 525."

In the passage just read, your honors find that Judge Woodbury speaks of this *debt of record* as a claim, but as a claim established;

and whether it be a "*verdict or a judgment,*" it is to be paid only by an appropriation by Congress for that purpose.

As a claim thus solemnly established and recognized as a "debt of record," all that I ask of your honors, at present, is to receive, as the proof of it, the evidence by which such debts are proved, the authenticated certificate of the record!

As Judge Woodbury seems to have taken some technical exceptions to the form of the Pennsylvania record in the case of Reeside *vs.* Walker, (although collaterally done, and appears to have no connexion with the cause, other than as side dicta,) I refer your honors, for a full exposition of the law and practice relative to the records of the courts of Pennsylvania, to the case of *Cromwell's heirs* vs. *The Bank of Pittsburg*, 2d Wallace, jr.'s, Circuit Court Reports, p. 570. In this case the question turned, in the main, upon record entries; and the opinion of the court—which is very able as well as amusing—was delivered by Judge Grier, who presided at the trial which took place in 1853. The case was afterwards carried to the Supreme Court of the United States, where the ruling of the court below, in favor of the record, was sustained, and is reported under the name of *Slicer et al.* vs. Bank of Pittsburg, in 16 Howard, p. 571.

In this case there had been a sale, upon an execution, of a very valuable property, and no entry of the judgment, on which it was sold, could be found of record. It opened the whole subject of Pennsylvania records. The sale of property was held good; and if there ever was anything in the suggestions alluded to of Judge Woodbury, they certainly can have no force now.

I have said and repeat, that the view I have taken of this matter is evidently the one also taken of it by Judges Baldwin and Hopkinson, before whom the case was tried; for though Baldwin was the mouthpiece of the court, his associate, the distinguished and accomplished Hopkinson, was at his side, and all who had any knowledge of that able jurist, knows that his presence and intelligence must have been a felt and sympathizing power, and sure guide in the conduct of the cause.

To the whole of the able charge of the court in the case, and to the opinion of Judge Baldwin overruling the motion and dismissing the reasons for new trial, I ask your honors' especial attention. The latter seems to have been entirely satisfactory to the counsel of the United States, and clearly exhibits the fact that no objection was taken to the finding of the jury on the principle of an amount being found for the defendant.

As all who were engaged in that cause, both the judges and all the counsel on both sides, including my honored colleague, Mr. Coxe, were Pennsylvania jurists, they were all familiar with the law of the forum ruling the case; and the whole proceedings, from beginning to end, can be understood fully, only by keeping this fact in view. The question now *insinuated* to defeat justice never reared its ugly front throughout the cause; but both sides, intent only on evolving and establishing the substantial truth of the case, labored in entire harmony, under the issues formed and the law governing them, to produce the results of justice.

The counsel for the government, I have already shown, in their reasons for a new trial, treat the "*verdict*" in its double aspect as a unit, and so does Judge Baldwin in his opinion dismissing those reasons. In this opinion, (page 154,) he says: "In considering the reasons for a new trial, we must take the '*verdict*' in its *two* aspects: 1st. As a general finding in favor of the defendant, directly negativing the existence of any balance due to the United States; and, 2d. As a certificate that the sum named was due by them to the defendant."

And so, throughout, both himself and the counsel consider the "verdict" as a unit, composed of the two elements; and when the word "verdict" is used by either of them, without words of limitation, the whole finding of the jury, in both its parts, is included.

And in this sense of the "verdict" judgment was finally rendered on the "verdict"—meaning that the court had gone as far as it could go; that, as it could not finally issue *execution* against the United States, no one step in advance could be taken by it; but having gone to the extent of its jurisdiction, it pronounced its FINAL *affirmation* of its proceedings, in order that, if deemed advisable by either party, a writ of error might be sued out.

The court, in delivering this opinion, says "that the verdict for Reeside might, under the evidence, have been larger; though, in its opinion, *it approximates as near to a correct balance of accounts as could reasonably be expected on another trial.* Both parties appear to have produced all the testimony which was accessible to them; there is no assurance that any new light can be thrown on the transactions in which the controversy began; it has long been expensive and harassing; there is no reasonable ground for believing that its continuance here would lead to a result satisfactory to either party, or terminate in a manner more conducive to the ends of justice than the present has done. It cannot be expected that a better or more impartial jury could be selected—there certainly cannot be one more patient or attentive than they were; a case of great difficulty and complexity was before them; they examined it deliberately, and agreed on a result which cannot be attributed to passion, prejudice, or any improper bias."—(See Baldwin's opinion, p. 162.)

And again, on page 163, he thus concludes his opinion:

"I am fully satisfied that a large balance is justly due to the defendant; any judgment on the verdict is subject to a writ of error, on the exceptions taken at the trial, which will cause some, perhaps much, delay. Should it be reversed by the Supreme Court, there must be a new trial of the whole case; if affirmed, it will only be operative in law as a judgment for the defendant, to preclude the United States from afterwards claiming a balance; but the court can take no further steps to enforce the payment of the balance found due by them, as they could do in a similar case between individuals. The defendant must appeal to another tribunal for ultimate redress, where the whole merits of his claim may be re-examined. Whether it will or ought to be done, does not comport with my duty to say; but, inasmuch as Congress may act on this subject according to their own discretion, it is evident that the time may be far distant when the controversy may be terminated, whatever may be the ultimate decision of future juries

of this or the Supreme Court. On the whole, my opinion is, that the motion for a new trial be overruled and judgment rendered in the verdict."

Thus concludes Judge Baldwin his very able opinion upon dismissing the reasons for new trial, and ordering judgment on the verdict. To this opinion, the whole of it, I ask your honors' most respectful attention. No fair mind can peruse it without being satisfied of the justice of the verdict.

The court's duty had been fully performed. Its authority was now exhausted. Had the verdict been for the United States, it could have been rendered *operative* for the raising its amount from the defendant, if any means had remained to him sufficient for the purpose; for the United States, having the power, had furnished the court with ample executory machinery to that end. But the verdict was for the defendant, and no means had been provided to render it *operative*. The government had authorized the court to determine and establish judicially the right, but had given it no authority to *do* the right. It could therefore take no action to make the verdict *operative* for its payment. To attain such result, nothing was left Reeside but an appeal to Congress. The court could *determine* the *debt:* the Congress was ordered by the 8th section of the 1st article of the Constitution to *pay* it.

It has been said that a master-mind, thoroughly understanding a science, and fully imbued with its fundamental principles, has reference in all its reasonings to these principles, and that, to the intelligent listener or reader, these principles are always a felt and appreciable presence, though they be not in terms named or mentioned.

How evidently does Judge Baldwin exemplify the truth of this remark, and refer to great principles here. You see that he has in his mind the fundamental distinction between the judicial or right-determining power and the legislative; that he knows the right, as determined by his court, is judicially determined and established under the Constitution and laws, and that it is the duty of the legislature under the same Constitution to make provision for its satisfaction; in a word, that his court has established the *debt* due by the government, and that it is the duty of Congress to *pay* it. And clearly seeing this, you see with equal clearness that he has learned by experience that the legislative branch of the nation, being in fact irresponsible in such cases, commits frequently the common mistake of confounding *power* with *authority;* supposing, because it has the *power*, that it is therefore *authorized*, and that simply because it *can* do as it pleases, it thinks and acts as if it has the *right* so to do. Fatal, fatal, fatal mistake!—the evil of all irresponsible authority, mistaking the *possible* for the *lawful*. Hence you see further, that Judge Baldwin evidently thought that the payment of this debt might be postponed till some far-distant day. The fact has more than verified the accuracy of his far-seeing insight.

Law is not less law because there may be no superior disposed to enforce it; and a judicial tribunal is false to its great trust, if it forbears boldly to declare the law, out of deference to mere power or the possible dispositions of power, whose duty it is to submit to the law's

rule. The maxim that there is no law where there is no superior, is a maxim bad in morals, the source of indescribable wrong and confusion, and the foundation of all practical despotism, whether operating in a republic or an absolutism.

See on this subject Phillimore on International Law, 1st vol., p. 72; and Bishop Butler's famous Ethical Discourses on "Human Nature," and particularly 2d discourse, section 16. These Discourses constitute, in fact, the greatest ethical treatise in our language, and are alike applicable to nations, societies, legislative and judicial tribunals, as to individuals.

All the questions, however, of a general nature, involving the elementary principles of the case, constitutional, moral, and legal, have been discussed by my colleagues, or will be so discussed, with such force of reasoning, copiousness of learning and illustration, and enforced by such an array of authority, as would make it vain and superfluous for me to attempt even to glean in the same fields. Besides, it is away from the one single point to which I purposed solely to direct your honors' attention, and upon which I think the whole case turns.

Judge Baldwin, who presided at the trial of this case, has long since gone to his grave; whither Judge Hopkinson, his distinguished judicial colleague, had gone before him. Reeside, himself, took his final leave of earth not long after this decision in his favor; and Mary Reeside, his widow, with the grave opening before her, oppressed with the bequeathed load of governmental injustice, her late husband's only reward for an anxious life spent in ceaseless toil in the government's service, now comes into your court and asks your honors to take whatever steps may be necessary, in the language of Judge Baldwin, to make her verdict *operative*, so as to produce its payment. She asks you to say, judicially, that her debt is just, established by all the sanctions known as binding on the consciences of men and nations, and that it ought to be immediately paid; and, saying this, she asks you to present a bill, in proper form, to the Congress, in order that an appropriation may be made by that body for its payment. The *debt* having been fixed by the courts, (whose duty it is to fix and determine indebtedness in cases of controversy,) it becomes the duty of the Congress, by the 8th section of the 1st article of the Constitution, promptly to *pay* it. The same constitutional provision making it their duty to pay, invests them with the fullest possible power of taxation to raise the means wherewith to pay. All the wealth of this great nation has been placed at their disposal by a just and magnanimous people for that purpose.

That your honors will say and do as the claimant, Mary Reeside, thus asks, upon the *evidence* submitted to you, I cannot be permitted to doubt.

The 7th article of the amendments to the Constitution reads thus:

"In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be *preserved, and no fact tried by a jury shall be otherwise re-examined in any court of the United States than according to the rules of the common law.*"

If this case had been presented to your honors, evidenced only by

the authenticated certificate which I have been discussing, and resting solely upon this article of the Constitution, without one word of argument in its support, I cannot see how a decision in our favor could have been withheld for one moment.

Interest.

Taking it then for granted that there is and can be no doubt about the conclusiveness of the verdict, and our certificate evidencing it, I come to another question—that of the interest to be allowed as an essential part of our debt. I will allude to this rather than discuss it; because, first, it seems so necessarily to follow the verdict as an incident, that there is no need of discussion; and, secondly, because it has been discussed with very great ability by my colleague, Mr. Stewart, who has supported his view of the subject with such weight of authority and power of reasoning, as to render another elaborate discussion of it altogether inexcusable. I therefore respectfully refer your honors' attention to his printed argument, beginning at page 84 and concluding at page 113.

I purpose in fact to do nothing more than again to state the point. The disallowance of interest in this case, so far as the family of Reeside is concerned, would be as absolute a denial of justice as if the whole principal were denied; for not one farthing of the amount allowed could ever come to their enjoyment.

By the act of the provincial legislature of Pennsylvania, passed in the year 1700, to be found in 1 Smith's laws, p. 7, and Purdon's Digest, p. 451, it was enacted as follows:

"Lawful interest shall be allowed to the creditor for the sum or value he obtained judgment for, from the time the said judgment was obtained till the time of sale, or till satisfaction be made."

This act is still in force, and has been the law of Pennsylvania on the subject from the time of its passage, the year 1700, down to this hour. The act itself is so plain as to admit of no misconstruction; and the courts of Pennsylvania have decided, therefore, uniformly with the decision in 4th Dallas, p. 252, (Fizgerald *vs.* Caldwell's executors,) that "*interest is a legal incident to every judgment.*"—(See 5 Watts, p. 464; 6 Watts, 53; 6 Binney, 437; 5th Wharton, 280.) Interest so follows every decree of the orphan's court, and every verdict of a jury.—(4 Harris, 151.)

By the act of 2d March, 1723, Purdon's Digest, p. 451, 1 Smith's laws, p. 156, legal interest in Pennsylvania was fixed at 6 per cent., and such continues the rate of interest in that State to this day.

Mary Reeside has stated in her second amended petition, that her testator's estate was so involved, by the heavy indebtedness incurred by him for the government, in his lifetime, that his whole estate was sacrificed under sales of various executions, issued upon judgments had against him for such indebtedness; and I myself know, may it please your honors—for I had a professional connexion with the fact—of one piece of property so sold, for about $7,000, which now, if possessed by Reeside's family would be worth to them nearly the whole amount of their claim in this case, principal, interests, costs, and all!

She has stated, also, in her said amended petition, that after the estate of her testator had been thus sacrificed by sales on executions, there remained judgments in the different courts of Philadelphia against the estate of her testator, amounting to $136,383 51; and that these judgments were founded upon the responsibilities assumed by him to raise money for the government. Of the existence of these judgments against her testator, she has furnished your honors the solemn *proof*, by authenticated certificates of their several amounts, from the courts where they exist. These judgments are twenty-six in number, the first of them dated July 2, 1836, and the last on the 27th of March, 1849. Twenty-one of these judgments, amounting to $120,025 91, were entered in the lifetime of James Reeside. The other five of them, amounting to $16,357 60, were had after his death.

Without attempting to calculate the interest on these judgments severally, I have roughly averaged the whole, so as to get a point of time from which to make an interest calculation, in order to arrive at the amount of interest upon them, now due.

Fixing that time to be the first of January, 1840—though an accurate average would carry it back anterior to that period—the *simple* interest at 6 per cent. (the legal rate in Pennsylvania,) from January 1, 1840, to July 1, 1856, fifteen years and six months, would be - - - - - - - - - $126,836 65
To which add the principal - - - - - 136,383 51

And the amount of the indebtedness of Reeside on these judgments, is - - - - - - - 263,220 16
From this deduct the whole of the claim of Reeside, (without interest) - - - - - - - - 188,496 06

And there is a balance against Reeside of - - 74,724 10

Or, in other words, allowing Reeside his whole judgment without the interest, and you would leave his estate in debt to his judgment creditors alone, on the 1st of July, 1856, to the amount of $74,724 10. And this debt, be it remembered, all incurred by him for the United States, and the amount of which was realized and used by them!

Nor is this all, even upon this simple view of it, for in this calculation the costs of twenty-six suits do not enter.

There is another view of this matter which may be taken, and it is probably sustainable by the fact, though we have not had the records certified to show it. However, as it affords me the opportunity to state the law of Pennsylvania on the subject, (necessary to be shown for determining the case,) and exhibits the enormity of the injustice done to the claimant by the government, I will dwell upon it for a few moments.

The calculation I have made of interest upon the judgments against Reeside, has been made upon the principle of *simple* interest only; whereas, it is not improbable—nay, it is perhaps certain—that under the laws of Pennsylvania, *that interest has been three times compounded.* A judgment remains a lien on the real estate of the debtor, by the laws of that State, for a period of five years only from the time it is

entered, unless it be revived by *a scire facias*. This, it is customary to do, and all careful creditors, as well as all attentive and vigilant practitioners, attend to having it done strictly.

In the popular phrase of the profession, "it keeps the judgment alive," and increases at every revival, the amount of the original judgment, and is made a means of compounding interest. For instance, the judgments against Reeside, as I have averaged their respective entries for a point to calculate interest from, have probably been revived three times, once in 1845, once in 1850, once in 1855. Supposing this be the average of their revivals, the case will now stand thus:

Judgments against Reeside, January 1, 1840 - -	$136,383 51
On the revival of these judgments, 1st January, 1845, five years' interest will be added - - - -	40,915 05
Judgments as revived January 1, 1845 - - -	177,298 56
On the revival of these judgments, January 1, 1850, there would be five years' interest - - - -	53,189 55
Judgments as revived January 1, 1850 - - -	230,488 11
On the revival of these judgments, January 1, 1855, there would be five years' interest - - - -	69,146 40
Judgments as revived January 1, 1855 - - -	299,634 51
Now add interest on these judgments from January 1, 1855, to July 1, 1856 - - - - - - -	26,967 10
Amount of judgments and interest against Reeside till July 1, 1856 - - - - - - - - -	326,601 61

This, your honors will perceive, does not include the costs of the suits. The three revivals of twenty-six suits would include the costs of three times that number, namely, seventy-eight suits, to which add the costs of the original twenty-six suits, and you have altogether, besides this amount of interest, the costs of one hundred and four suits; all springing from the patriotic sacrifices made for his country by James Reeside, whose energetic public spirit was ever sleeplessly active in his country's service.

Your honors will remember how feelingly the claimant complains, in her second amended petition, of the incessant litigation and harassment to which she is subjected in consequence of the numerous writs of *scire facias* so constantly being sued out to revive these judgments.

It is the constant and uniform practice in Pennsylvania to compound interest in the way I have spoken of; and it is settled law, that "where a judgment is revived by *scire facias* the amount of principal and interest then due, constitutes a new principal, and the plaintiff has a right to charge interest on the aggregate amount of principal and interest due at the time of rendering judgment on each *scire facias*." (Fries *vs.* Watson, 5th Serg. & Rawle, p. 220; Berryhill *vs.* Wells, 5th Binney, p. 56; Maus *vs.* Maus, 5th Watts, p. 318; and see note to Purdon's Digest, p. 451.)

Thus, then, supposing no interest should be allowed the claimant in this case, the judgments against Reeside, and all being for governmental responsibilities, would amount, on the 1st of July, 1856, to - - - -	$326,601 61
From which deduct the amount of the principal of his claim, (without interest) - - - - - -	188,496 06
And there would be a balance against his estate of -	138,105 55

And this balance, by the law of Pennsylvaia, where all the judgments are, would be thus going on increasing by the same rule of proportion at a most fearful rate, whilst the judgment in favor of Reeside would forever remain stationary, a mere thing to engender contention from generation to generation.

The judgments of which I have been speaking, as certified to you against Reeside, are all in the courts of Pennsylvania, and the interest is rated and applied to them by Pennsylvania law. The judgment in favor of Reeside against the United States, is in the courts of the same State, subject to the same interest laws, and entitled to the same legal and equitable considerations.

I have made you a simple exhibition of how the fact stands, from the authenticated records before you. It seems to me that no argument can be offered, however fortified with authority, making a stronger appeal to the justice of the country, than does this simple exhibition of fact. It shows the inexorable necessity for an immediate payment of this judgment, *together with the fullest amount of interest possible to be exacted.* If interest be not paid here to the fullest extent allowed by law, and the rules and practice of courts, then no case can occur where the government could be compelled to pay interest, or to do justice.

Stating the case of Reeside's judgment against the United States, as I have stated the various judgments against him, it would stand thus:

December 6, 1841. Judgment - - - -	$188,496 06
Simple interest from that date, at 6 per cent., to July 1, 1856 - - - - - -	164,746 81
Amount due, principal and interest, July 1, 1856 -	353,242 87

This does not, however, include costs.

But stating his case, as the law of Pennsylvania has stated, and made the judgments against him to be, as I have before shown—

It stands thus: Judgment, December 6, 1841 - -	$188,496 06
To this add interest to July 1, 1856, upon the principle of three compounds, one in every five years, in the way the law has fixed it, on the judgments against him - - - - - - - -	215,397 31
Amount of judgment and interest due Reeside's estate, July 1, 1856 - - - - - - -	403,893 37

This does not include costs of suit.

I submit, with all respect to your honors, that this is the principle upon which his claim for interest should be allowed. The judgments against him result from the wrongs the United States have done him, by withholding from him this very claim; and as the law forces him to settle and discharge, upon this principle, the same law ought to hold the United States, the original cause of all this wrong and litigation, to a like rule of adjustment. Anything else would be but a mere mockery of justice.

Interest is payable in Pennsylvania by the State, not only on judgments against the State, but upon liquidated balances. This point was expressly decided by the supreme court of Pennsylvania, in *Respublica* vs. *Mitchell*, 2 Dallas, p. 101: a case showing also another fact, that under the defalcation act of 1705, (under which the verdict was given for Reeside,) an award may be made *against the State* for a specific amount, as in Reeside's case, for the defendant.

The case came before the court on an appeal from the settlement of Mitchell's account by the comptroller general; and the cause had been referred by consent. (The third section of act of 1705, making provision for such reference.) The referees reported a sum due to Mitchell; but had omitted to allow him interest, which being stated to the court, "*it was resolved, that the State was liable to pay interest, as well as individuals;* and that the court would add it, under the circumstances of the case, although the referees had not expressly given it in their report."

In the case of *Edmund Milne* vs. *Rempublicam*, in the same court, 3 Yeats, 102, the same point was decided.

In that case the plaintiff's demand against the State was, 1st, for money paid; and, secondly, for money which he had not paid, but for which he was *liable*.

The attorney general, McKean, took two grounds in opposition to the claim: 1st, that the claimant was not entitled to interest against the State at all; and if he were, it was to be calculated only from the time he made his demand upon the legislature. The court said: "For such sums as the plaintiff has paid and shown his receipts, which are properly chargeable against the State, let interest be computed thereon, from the times of the dates respectively. As to the rest, (being for his *liability*,) interest is only due from the State from the time of the demand on the legislature." The rule, therefore, in Pennsylvania, with respect to interest, is alike applicable to the State as to individuals.

And a *parol* award bears interest, there, from the time of the award, and so do all settled accounts between the parties, from the time of the settlement.—(1 Yeats, p. 480, *Jones* vs. *Ringold*.)

"An account current, received and not objected to in a reasonable time, becomes a settled account, bearing interest from the time it is stated, and the balance is payable on demand. * * * And an account made up of principal and interest becomes one principal debt when settled, the aggregate balance bearing interest."

Bainbridge & Co. vs. *Wilcox*, 1 Baldwin's Reports, p. 536.—(See also upon this subject, *Barclay* vs. *Kennedy*, 3 Wash, C. C. Rep. 350.)

By the universal law of civilized nations, interest to the amount of

full damages, for the purpose of doing the fullest justice, would be allowed in this case. Why, then, should it not be allowed by the United States, a government wearing upon its shield as its proudest device, the declaration that it was born and lives, not merely to *do* justice, but to "ESTABLISH" justice?

The only answer why, in ordinary cases, it does not pay interest is, that it is always ready and always presumed to be ready to pay the principal; and that, therefore, it is not guilty, and cannot in contemplation of law, be guilty of any laches or neglect of duty. In other words, this nation, brought into life for the purpose of establishing justice, resorts to a *legal fiction* to *do wrong*—and *lies, in order that it may do wrong.* Whereas, the nation from which we derive our legal and political being, and so frequently denounced for its oppression, invents and resorts to *legal fictions*, for the purpose of enabling it more abundantly to *do* the *right.*

"*Fictio juris*, is defined to be a legal assumption that a thing is true which is either not true, or which is probably false as true; *and the rule on this subject is, that the court will not endure that a mere form or fiction of law, introduced for the sake of justice, should work a wrong contrary to the real truth and substance of a thing.*" * * "Whenever a fiction of law works injustice, and the facts, which by fiction are supposed to exist, are inconsistent with the real facts, a court of law ought to look to the real facts." * * "Nor will a legal fiction be raised so as to operate to the detriment of any person." * * "*The law does not love that rights should be destroyed, but on the contrary, for the supporting of them,* INVENTS NOTIONS AND FICTIONS."

See Broom's Legal Maxims, pp. 54, 55; 2d Burr., p. 950; 3d Rep., p. 36; 1st Lord Raymond's Rep. pp. 516, 517; and Wood's Institutes, pp. 4, 5.

I will not say, Shame on our people—for it would be unmerited, as they are ignorant of the fact; but I say, shame on the petty officials who abuse their faith and dishonor their justice; and I will say, shame to the members of the bar—the ministers of justice—if they do not take the means to make known to the country the code of injustice adopted by their servants in high places, as applicable to the dealings of individuals with their government. The government habitually sets the example of dishonest and unfair dealings, which no one of its citizens could follow and thereby live.

However, there can be no pretence, I suppose, that even any of the government's *fictions* can be applied to the claim of interest in this case. Here the demand has been made, and brought to the notice of the government, throughout all its departments, in such a way as to admit of no doubt of its refusal, in fact, to pay. No inconvenience or wrong can accrue to the government, or any impediment be thrown in the way of its working, by the payment of interest here. It cannot by possibility so operate as to form any example by which government may, in any way, be surprised into the payment of interest in any other case.

All departments of the government know and have long known of the existence of this debt. The government itself took the means of ju-

dicially determining and establishing it. The government itself fixed it, recorded it, and made itself liable to pay it, on the 6th of December, 1841; and on the eighteenth day of July following, (1842,) as thus fixed and forever established, it was presented to the Congress for payment; and has annually, or nearly so, been before Congress, in one shape or other, for payment ever since. None of the fictions, therefore, ever heretofore invoked, even by the officials of our government, apply to this case. And I therefore say that interest should be allowed from the 6th of December, 1841, the day of recording the verdict, down to the time of payment; and this interest should be evidently calculatd according to the principle upon which interest has been and is exacted from Reeside, on the judgments which I have before presented to you. Any other mode of calculation would not be doing him that equal justice which the law compels him to do, and which he has been compelled to do, as the result of the government's own wrong done to him.

This debt has been established by a trial by a court and jury, in an action brought by the United States for that purpose. It is, I respectfully submit, the duty of this court to say so; and, in my judgment, it is, then, the duty of the Congress immediately to order it to be paid. The people of the United States, by the 8th section of the 1st article of the Constitution, have *ordained* that "The Congress shall have power to lay and collect taxes, duties, imposts and excises, to *pay the debts*, and provide for the common defence and general welfare of the United States."

This *debt* having been established, by the means and in the way provided by the Constitution, these great people, intent on doing justice, and having pledged their possessions for the purpose, now order the Congress to pay it. It is their debt; they have provided overflowing treasures for its discharge, and they now say to the Congress, do you pay it, and do that justice which we have "*established*" shall be done.

APPENDIX.

Mills vs. *Duryee*, *7th Cranch*, *page* 481.

Mr. Justice STORY delivered the opinion of the Court.

The question in this case is, whether *nil debet* is a good plea to an action of debt brought in the courts of this district, on a judgment rendered in a court of record of the State of New York, one of the United States. The decision of this question depends altogether upon the construction of the Constitution and laws of the United States.

By the Constitution it is declared that "full faith and credit shall be given in each State to the public acts, records, and judicial proceedings of every other State; and the Congress may, by general laws, prescribe the manner in which such acts, records, and proceedings shall be proved, and the effect thereof."

By the act of 26th May, 1790, chap. 11, Congress provided for the mode of authenticating the records and judicial proceedings of the State courts, and then further declared, that "the records and judicial pro-

ceedings, authenticated as aforesaid, shall have such faith and credit given to them in every court within the United States as they have by law or usage in the courts of the State from whence the said records are or shall be taken."

It is argued that this act provides only for the admission of such records as evidence, but does not declare the *effect* of such evidence when admitted. This argument cannot be supported. The act declares, that the record, duly authenticated, shall have such faith and credit as it has in the State court from whence it is taken. If in such court it has the faith and credit of evidence of the highest nature, viz: *record evidence*, it must have the same faith and credit in every other court. Congress have therefore declared the effect of the record, by declaring what faith and credit shall be given to it.

It remains only, then, to inquire in every case what is the effect of a judgment in the State where it is *rendered* In the present case the defendant had full notice of the suit, for he was arrested and gave bail, and it is beyond all doubt that the judgment of the supreme court of New York was conclusive upon the parties in that State. It must, therefore, be conclusive here also.

But it is said, that admitting that the judgment is conclusive, still *nil debet* was a good plea; and *nul tiel record* could not be pleaded, because the record was of another State, and could not be inspected or transmitted by *certiorari*. Whatever may be the validity of the plea of *nil debet* after verdict, it cannot be sustained in this case. The pleadings in an action are governed by the dignity of the instrument on which it is founded. If it be a record, conclusive between the parties, it cannot be denied but by the plea of *nul tiel record;* and when Congress gave the effect of a record to the judgment, it gave all the collateral consequences. There is no difficulty in the proof. It may be proved in the manner prescribed by the act, and such proof is of as high a nature as an inspection by the court of its own record, or as an exemplification would be in any other court in the same State. Had this judgment been sued in any other court of New York, there is no doubt that *nil debet* would have been an inadmissible plea. Yet the same objection might be urged, that the record could not be inspected. The law, however, is undoubted, that an *exemplification* would in such case be decisive. The original need not be produced.

Another objection is, that the act cannot have the effect contended for, because it does not enable the courts of another State to issue executions directly on the original judgment. This objection, if it were valid, would equally apply to every other court of the same State where the judgment was rendered. But it has no foundation. *The right of a court to issue execution depends upon its own powers and organization. Its judgments may be complete and perfect, and have full effect, independent of the right to issue execution.*

The last objection is, that the act does not apply to courts of this district. The words of the act afford a decisive answer, for they extend *"to every court within the United States."*

Were the construction contended for by the plaintiff in error to prevail, that judgments of the State courts ought to be considered *prima facie* evidence only, this clause in the Constitution would be utterly unimportant and illusory. The common law would give such judg-

ments precisely the same effect. It is manifest, however, that the Constitution contemplated a power in Congress to give a conclusive effect to such judgments, and we can perceive no rational interpretation of the act of Congress, unless it declares a judgment conclusive, when a court of the particular State where it is rendered would pronounce the same decision.

On the whole, the opinion of a majority of the court is, that the judgment be affirmed, with costs.

Hampton vs. *McConnell*, 3*d Wheaton's Reports, page* 234.

This was a case in the circuit court of the United States for the district of South Carolina, on a judgment in debt on a judgment of the supreme court of New York.

Mr. Chief Justice Marshall, delivering the opinion of the court, said: "This is precisely the same case as that of *Mills* vs. *Duryee*. The court cannot distinguish the two cases. The doctrine there held was, that the judgment of a State court should have the same credit, validity, and effect in every other court in the United States which it had in the same where it was *pronounced,* and that whatever pleas would be good to a suit thereon in such State, and none others, could be pleaded in any other court in the United States."

IN THE COURT OF CLAIMS.—No. 1.

ON THE PETITION OF THOMAS FILLEBROWN—SUBSTITUTED IN THE CASE OF MARY REESIDE.

Brief of the United States Solicitor.

This is a claim for $430, on account of disbursements alleged to have been made by the claimant, some time between the years 1825 and 1829, of navy hospital funds. The petitioner was a clerk in the Navy Department at the time, and in receipt of one thousand dollars per annum salary. The navy commissioners, of which the Secretary of the Navy was the chief, and the Secretaries of the Treasury and War Departments were assistants or advisers, made the claimant secretary of their board, and contracted for his compensation at $250 per annum. He was afterwards required to pay out funds belonging to the navy hospitals, for which he charged one per cent. commission.

The questions of the power of the commissioners so to employ the claimant—the fact of such employment, the performance of the service, and the rates of compensation—were tried in a suit at law before the circuit court of the District of Columbia, where they were determined for the petitioner, and on appeal the decision of the circuit court was affirmed by the Supreme Court. On the principles of that decision, and according to the finding of the jury, the balance claimed by the petitioner was due.

But it is contended for the United States that this court is not concluded by the finding of a jury or the decisions of any court. This is not an inferior tribunal to the Supreme Court of the United States, but to Congress, and is to be governed in its decisions and course of procedure, not by the decisions of the courts, but by the principles applicable to the legislative body.

All the facts on which this claim is founded must be submitted to this court, and all the questions passed upon by the courts of law are here again to be considered as open and original questions, as Congress, to which this court is auxiliary and subordinate, not only has the right to do, but is bound to do before acting.

It was contended, on the hearing of this case before the Supreme Court, that the act of 1797 (United States Laws, p. 512) repealed so much of the act of 1795 as gave the Comptroller final jurisdiction in the settlement of the accounts of disbursing officers.

This proves nothing in the case before us. It is admitted that if either the Comptroller or the courts decide that an officer in possession of funds is entitled to keep them, the government cannot compel him to pay them over. Congress has by law committed so much to them, and enabled them to pass authoritatively and finally upon the question of whether there is anything due from the individual to the government; but it has committed no power to either to pass on the alleged indebtedness of the government to an individual. It has not delegated that power, and cannot. By the Constitution, Congress alone can have the ultimate decision of that question. Congress alone can appropriate the public money, and the power of appropriation involves of necessity the duty of considering the propriety or justice of the appropriation, and, therefore, it must investigate the facts and interpret the laws and contracts which occasion the demands for money from the public treasury. This power cannot be delegated by Congress without abdicating its office. It follows, therefore, that whilst Congress may, and unquestionably would, pay great deference to the opinion of the Supreme Court in the interpretation of a law, yet, when an appropriation is asked, Congress must interpret for itself. And this court, instituted by Congress to assist in the investigation of questions involving appropriations, to perform its duty and render the assistance expected from it, must investigate for itself, and judge for itself; and accordingly it is required to present in its report to Congress *the facts* of each case, with its opinion thereon, together with all the evidence and the arguments of counsel. There are cases in which, should Congress fail to appropriate, it would be a virtual dissolution of the government, and the failure would in such cases be a failure in constitutional duty. This remark applies to appropriations for the support of the government, according to the plain requirements of the Constitution and the laws; and yet even in such cases it is with Congress to judge; and it is only because the duty is so plain, and the laws so explicit in their requirements, that we are enabled to say that Congress would be wanting in its duty if it failed to pass the laws. It belongs to no other branch of the government to define the duties of Congress, or the occasions on which it shall exercise the powers belonging to it, and so it is of the co-ordinate branches of the government. They must in every case judge for themselves within their proper spheres.

It is for the legislature to pass laws, the judges to interpret them when suits arise, and the executive to execute them. In the performance of these several duties, it will often happen that these several departments of the government are called on to interpret the same laws, but the action of each is independent, within its proper sphere. Neither is bound to conform to the opinion of the other, where, by the Constitution and laws, such opinion is not coupled with power to enforce it; and, in the absence of such power, such opinions are entitled to respect so far only as they are supported by reason in the minds of those on whom the responsibility of action is devolved.

I maintain, therefore, it is not sufficient, to authorize this court to give a favorable judgment for the claimant, that he shall produce and show to the court the judgment of the Supreme Court on the same legal questions, and the verdict of the jury on the same matters of fact; because, although the opinion and verdict are conclusive on all matters within the jurisdiction of the court, they are not so as respects the same questions of law and fact arising out of the jurisdiction of the court; and therefore, whilst the record of the court here relied on is evidence which closes and balances the account of the claimant with the Treasury Department, because the law gives that effect to it, it has not such force before this court; being merely an argument—of great authority, I admit—but still an argument which is not conclusive, and which in this case, and many others, has failed to satisfy Congress. The claimant must then set forth in his petition the particulars of the service he has rendered, for which he claims compensation, the law which authorizes his employment and compensation, and the amount remaining due and unpaid, which he claims, and not the judgment of a court where he was sued as a debtor, and wherein a portion of the compensation was allowed by the court to set off the indebtedness charged against him.

This claim is trifling in itself, but it is the forerunner of others, involving hundreds of thousands, and therefore I attach great importance to the question I have here endeavored to present.

M. BLAIR.

MARY REESIDE, EXECUTRIX, *vs.* THE UNITED STATES

Chief Justice GILCHRIST delivered the opinion of the court.

The claimant states the following case:

In the year 1839, there were accounts to a large amount unsettled between her testator and husband, James Reeside, and the United States. He alleged that there was a balance due him of $275,000, and the United States alleged that there was a balance of $47,000 due to them. In that year, (1839) the United States commenced a suit against him in the circuit court of the United States for the eastern district of Pennsylvania. The trial was had in the month of October, 1841. It occupied five weeks, and the jury were engaged two weeks in the investigation of the case. After a careful consideration of the facts, the jury found a verdict against the government, and certified, also, on the issue on the plea of set-off, that the government owed the defendant the sum of $188,496 06. The counsel for the United

States then moved for a new trial, but only because they hoped to reduce the balance found in favor of the defendant. After argument, that motion was overruled by the court, and an elaborate opinion was delivered to that effect, and a judgment was pronounced in bar of the action, but no formal judgment for execution was rendered on the verdict, because, and only because, the government could not then be sued, nor could it be coerced to make payment by execution. After the motion for a new trial was overruled, the United States took some steps towards suing out a writ of error to the Supreme Court, but it was dismissed; and the United States never in any other mode sought a revision of the verdict or a reversal of the judgment, nor was the evidence given on the trial shown by a bill of exceptions or otherwise.

The claimant insists that the verdict should conclude all further controversy as to the facts which were litigated, and should be deemed record and indisputable evidence that the United States owed the sum of $188,496 06 at the date of the verdict, and alleges, also, that she is entitled to interest on the amount of the verdict from the time when it was returned.

A transcript of the record has been offered in evidence, dated on the 6th day of December, 1841, from which it appears that the jury "find for the defendant, and certify that the plaintiffs are indebted to the defendant in the sum of $188,496 06." The counsel for the plaintiffs moved for a rule to show cause why a new trial should not be granted; and on the 9th of December, reasons for a new trial were filed. On the 12th of May, 1842, the motion for a new trial was refused, and judgment was rendered on the verdict. On the first of August, 1842, the plaintiffs sued out a writ of error, which, in January, 1849, with a transcript of the record of the judgment, &c., was transmitted to the Supreme Court. The writ of error was subsequently dismissed by the Supreme Court.

The question before us naturally divides itself into three parts:

1. Is the record of the verdict, and judgment thereon, competent evidence for the petitioner?

2. If admissable, what is its effect?

3. Is the petitioner entitled to interest on the amount of the verdict?

I. The thirty-fourth section of the act of Congress of September 24, 1789, (1 St., 92) commonly called the judiciary act, provides "that the laws of the several States, except where the Constitution, treaties, or statutes of the United States shall otherwise require or provide, shall be regarded as rules of decision in trials at common law in the courts of the United States, in cases where they apply."

In the case of Wayman *vs.* Southard, (10 Wheat., 24,) Mr. Chief Justice Marshall says: "This section has never, so far as is recollected, received a construction in this court; but it has, we believe, been generally considered by gentlemen of the profession as furnishing a rule to guide the court in the formation of its judgment, not one for carrying that judgment into execution. It is 'a rule of decision,' and the proceedings after judgment are merely ministerial. It is, too, 'a rule of decision in trials at common law,' a phrase which presents clearly to the mind the idea of litigation in court, and could never occur to a person intending to describe an execution or proceedings after judgment, or the effect of those proceedings."

According to this decision, this section has nothing to do with the proceedings after judgment. It means only that the judgment shall be rendered according to the laws of the State. What the proceedings may be after the rendition of the judgment, or how the judgment is to be enforced, is not a matter into which the court will inquire.

The chief justice expressly says, that in framing the thirty-fourth section, the legislature could not have extended its views beyond the judgment of the court, and that it has no application to the practice of the court, or to the conduct of its officers, in the service of an execution. It refers solely to the judgment, and the nature of the judgment and its effect must be determined by the laws of the State.

The first section of the Pennsylvania act of assembly of 1705, (1 Smith's Law, 49; Franklin's Laws, 88,) enacts that, "if it appear to the jury that the plaintiff is overpaid, then they shall give in their verdict for the defendant, and withal certify to the court how much they find the plaintiff to be indebted or in arrear to the defendant, more than will answer the debt or sum demanded, and the sum or sums so certified shall be recorded with the verdict, and shall be deemed as a *debt of record*, and if the plaintiff refuse to pay the same, the defendant, for recovery thereof, shall have a *scire facias* against the plaintiff in the said action, and have execution for the same, with the costs of that action."

Upon the trial of this case, no exception was taken that the set-off was improperly admitted, or that in a suit by the United States the jury might not legally certify the balance found due to the defendant. The case of the United States *vs.* the Bank of the Metropolis, (15 Peters, 377,) decides, that individuals, when sued by the United States, may avail themselves of credits or set-offs against the United States.

In Ramsey's appeal, 2 Watts, 231, the supreme court of Pennsylvania decided, that, when judgment was rendered on a verdict against the plaintiff, the debt was a "debt of record." In the case of Reeside *vs.* Walker, 11 Howard, 272, Mr. Justice Woodbury, in denying the application for a *mandamus*, speaks of this as a *debt of record*, citing the decison in Ramsey's appeal, 2 Watts, 230. Judge Woodbury's opinion appears to proceed on the ground that the United States cannot be sued, and that no *scire facias* had been issued. But the Pennsylvania act of April 11, 1848, provides that, "in all cases where, by the verdict of a jury, any debt or damages *shall have been* found or certified in favor of the defendant, he shall be entitled to judgment and execution in like manner as if the verdict had been in favor of the plaintiff, and the defendant need not resort to a writ of *scire facias* as required by the act of 1705 for defalcation."

That this is a "debt of record" we consider fully established. Chief Justice Gibson, in the case of Dougherty's estate, 9 Watts and S., 195, says that the scire facias is "only a judicial writ; is no new suit, but a mere handmaid in the original cause, and a step towards execution." Nor can we regard it as being anything substantially, to all intents and purposes, but a judgment by a court of competent jurisdiction, that the defendant is entitled to recover of the United States, the sum certified by the jury to be due, after a full hearing of the merits of the matters in controversy between the parties.

II. The second question is, what is the effect of such a judgment? It is well settled at common law that a judgment, where the same matter is in issue, is conclusive, and binds parties and privies. Such is also the decision of the Supreme Court in the case of Hopkins *vs.* Lee, 6 Wh., 109, and the Bank of the United States *vs.* Beverly, 1 Howard, 134. A judgment of a court of the United States, though voidable for error, cannot be impeached collaterally; it is valid and binding until reversed by a writ of error. Huff *vs.* Hutchinson, 14 Howard, 586. A judgment of a State court has the same credit, validity, and effect in every other court within the United States which it had in the State where it was rendered. Hampton *vs.* McConnel, 3 Wh., 234. In the case of Cardesa *vs.* Humes, 5 S. & R., 65, it is said: "In no case, nor under any circumstances, can the merits of the original judgment be inquired into for the purpose of a defence to a *scire facias*." In the case of Mills *vs.* Duryee, 7 Cranch, 481, Mr. Justice Story says: "It is argued that this act (May, 26, 1790,) provides only for the admission of such records as evidence, but does not declare the effect of such evidence when admitted. This argument cannot be supported. The act declares that the record, duly authenticated, shall have such faith and credit as it has in the State court from whence it is taken. If, in such court, it has the faith and credit of evidence of the highest nature—namely, record evidence—it must have the same faith and credit in every other court. Congress have, therefore, declared the effect of the records by declaring what faith and credit shall be given to it."

It is argued that the United States cannot be sued, that a set-off is a cross action, and that to hold that this balance found due by the jury was a debt against the United States, would be contrary to the doctrine that the sovereignty cannot be sued. But the United States have already, to a certain extent, consented that they may be sued, by the act allowing a defendant to file a set-off. There is nothing in the law which prohibits the defendant from having allowed to him a larger sum than the United States are seeking to recover. If the balance found due from the United States has not the effect of a debt of record, what becomes of the provision of the act of May 26, 1790, that a record shall have the same faith and credit which it has in the State court? We can, in fact, see no difference between the effect of a judgment between private persons, of this character, and a judgment in a case where the United States are plaintiffs, except that the judgment cannot be enforced by execution against the United States. It is still a judgment upon the matters in issue, and its payment is left not to the service of process but to the faith of the United States. In one sense there can be, acccording to the argument for the United States, no debt whatever against the United States, because they may refuse to pay any claim, even the national debt, and no one has the power to enforce the payment of it. But it would be an extraordinary argument, that they did not owe a debt because they had not themselves pointed out a means whereby a claimant could recover what would be considered a debt between man and man, and what is honestly a debt. And this is the very question before us, whether the United States do owe this debt, not whether there is any process by

which to enforce it, for confessedly there is none. "The right of a court to issue execution," says Mr. Justice Story, in the case of Mills *vs.* Duryee, "depends upon its own powers and organization. Its judgments may be complete and perfect, and have full effect independent of the right to issue execution. * * We can perceive no rational interpretation of the act of Congress unless it declares a judgment conclusive when a court of the particular State where it is rendered would pronounce the same decision." That the verdict and judgment thereon are conclusive also appears from the 7th article of the amendments to the Constitution, which provides that "in suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved; and no fact tried by a jury shall be otherwise re-examined in any court of the United States than according to the rules of the common law."

III. As to the interest upon the amount of the verdict, the judiciary act of 1789, which provides that the laws of the several States shall be regarded as "rules of decision," refers this point to be determined by the laws of Pennsylvania. The provincial act of Pennsylvania, passed in the year 1700, 1 Smith's Laws, 7, provides that "lawful interest shall be allowed to the creditor for the sum or value he obtained judgment for, from the time the said judgment was obtained till the time of sale, or till satisfaction be made." By the act of 2d March, 1723, 1 Smith's Laws, 156, legal interest was fixed at 6 per cent., and such is now the rate in Pennsylvania. In the case of Fitzgerald *vs.* Caldwell's executors, 4 Dallas, 252, it was decided, that interest was a legal incident to every judgment, and this decision has been repeatedly affirmed. In Respublica *vs.* Mitchell, 2 Dallas, 101, it was resolved that the State was liable to pay interest as well as individuals. Upon this subject the decision in the case of Thorndike *vs.* The United States, 2 Mason, 20, is in point. That was a case where the United States were lawfully parties to a suit at law, and as such were bound by the law which regulated the rights of parties. Mr. Justice Story said: "The United States have no prerogative to claim one law upon their own contracts as creditors, and another as debtors. If, as creditors, they are entitiled to interest, as debtors they are bound also to pay it."

An argument has been addressed to us by one of the counsel for the claimant, for the purpose of showing that under the Constitution a citizen may sue the United States without their consent. But there are numerous dicta showing the opinion of the Supreme Court to the contrary. It perhaps would be promotive of justice if the United States could be sued. Mr. Chief Justice Jay, in the case of Chisholm *vs.* Georgia, 2 Dallas, 478, says: "I wish the state of society was so far improved, and the science of government advanced to such a degree of perfection, as that the whole nation could, in the peaceable course of law, be compelled to do justice, and be sued by individual citizens." Mr. Justice Story, while lamenting the absence of any provisions to enable the creditors of the United States to sue, takes it for granted that such provisions would be constitutional, and refers to the English proceeding of a petition of right. (Story's Comm., § 1672.) But the general liabilaty of the United States to be sued, is not a question

before us. It is enough to say, that when the United States voluntarily submit themselves to the jurisdiction of a court, which is governed in its adjudications by the laws of a particular State, and those provide that a balance found by a verdict of a jury against the plaintiff shall be "a debt of record," we can conceive of no process of logical reasoning which could induce us to consider a judgment, upon such a verdict, as anything but "a debt of record" which the United States are bound to pay.

The opinion of the court is, that the United States owe the claimant the sum of $188,496 06 with interest thereon from the 6th day of December, 1841, and we report a bill accordingly.

MARY REESIDE, Executrix of JAMES REESIDE, deceased,
vs.
THE UNITED STATES.

Judge BLACKFORD's dissenting opinion:

This is a very important case.

The judgment of the majority of the court is in favor of the claimant for one hundred and eighty-eight thousand four hundred and ninety-six dollars and six cents, with interest on that sum from the sixth day of December, 1841.

I consider that judgment to be erroneous, and am therefore obliged to dissent from it.

The petition sets out the following facts:

The United States commenced a suit in 1839, against the claimant's testator, to recover the sum of forty-seven thousand dollars, alleged to be due from him to the United States. The defendant pleaded the general issue and a set-off, claiming a balance of about two hundred and seventy-five thousand dollars against the United States. The cause was submitted to a jury, under a charge from the court. The jury found a verdict against the government, and certified also on the issue on the plea of set-off, that the government justly owed the defendant one hundred and eighty-eight thousand four hundred and ninety-six dollars and six cents. A motion for a new trial was made on behalf of the government, which motion was overruled, and a judgment pronounced in bar of the action. But no formal judgment for execution was rendered on the verdict for one hundred and eighty-eight thousand four hundred and ninety-six dollars and six cents, because the government could not then be sued or coerced by execution. A writ of error was sued out by the government on the judgment, which writ was afterwards dismissed. The defendant, Reeside, forthwith demanded of the Treasury Department payment of the amount so found by the jury to be due him, but the payment was withheld. In 1848, the present claimant petitioned the circuit court of the District of Columbia for a mandamus, to compel the Secretary of the Treasury to pay her the amount assessed by the jury as aforesaid; but the court dismissed her petition. The Supreme Court of the United States, on appeal, affirmed that judgment, on the ground that the government not being suable, no technical judgment had been given for the one hundred and eighty-eight thousand four hundred and

ninety-six dollars and six cents; and that even had there been such judgment, the sovereign could not be coerced by the subordinate power of any of its courts. The claimant has since made frequent applications to Congress for relief, but without success.

The above is a general statement of the case as made by the petition. For a more particular account, the petition itself is referred to.

The claimant's right to recover in this case depends entirely upon the aforesaid certificate returned by the jury in the circuit court.

It is impossible, in my opinion, that that certificate can be of any legal validity whatever; and if it be not valid, there is no foundation for the present suit in this court.

The law is settled that, at the time the suit against Reeside was decided, no suit could be brought against the goverment in the circuit courts of the United States, nor can any such suit be now brought in those courts. The United States, as they had a right to do, sued Reeside for a certain sum alleged to be due from him to the government. In that suit the defendant had a right to show, by matters of set-off which had been disallowed at the treasury, that he was not indebted to the United States. (1 Stat. at Large, 515, section 34.) He could in that way, if the facts justified him, defeat the suit, but that was all he had a right to do. There was no law which enabled a defendant to obtain a judgment against the United States for any sum whatever, nor is there any law which will enable him to do so now. There is no case in which such judgment has ever been obtained. The reason is, that the nation, as a sovereign power, cannot be sued in the circuit court without its consent, and no individual shall be permitted to recover a judgment against it indirectly as a defendant, which he could not recover directly as a plaintiff. It appears to me, therefore, very plain, that said certificate of the jury in favor of Reeside is void. There was no jurisdiction of the court to recognize such certificate, nor had the jury any authority to give it. The court, accordingly, treated the certificate as void by taking no action upon it. Reeside himself seems to have considered it inoperative under the Pennsylvania statute of 1705, for he did not attempt to proceed on it under that statute by scire facias, which was his only course had the certificate been valid. All that was done by the court, and all they had a right to do, was to render a judgment for the defendant generally, which amounted to nothing more than that *the defendant should go without day*.

The question as to the character of that judgment came before the Supreme Court of the United States in 1850, on error from a judgment of the circuit court for the District of Columbia, refusing a mandamus to the Secretary of the Treasury, applied for by the present claimant, Mrs. Reeside. In the report of the case in the Supreme Court, the transcript of the proceedings in the suit in which the aforesaid certificate was given is set out. The court, after a minute examination of those proceedings, concludes as follows: "The judgment, so far as regards that action, would be, when no scire facias was sued out, that the defendant go without day; and so these minutes should be drawn up when put in a full and due form." (Reeside *vs.* Walker, 11 Howard, 288.) That is an express decision by the Supreme Court of the

United States, that the judgment in question is, in reality, nothing more than a judgment *that the defendant go without day.*

As the judgment in the suit in which said certificate was given was, and could be only, that the defendant go without day, how can any proposition be clearer than that that certificate for one hundred and eighty-eight thousand four hundred and ninety-six dollars and six cents is a nullity, so far as any legal obligation is concerned? It authorized no judgment against the government. It is the mere private opinion of the individuals that constituted the jury, where they had no right, except as individuals, to express an opinion; and it can be recognized by no court as the foundation of any legal proceedings against the United States. The suit being brought by the government, the jury could go no further, whatever the matters of set-off amounted to, than merely to find a verdict for the defendant generally.

This principle was settled as early as the year 1804, by the supreme court of Pennsylvania, and no court from that time to this, as far as I know, has ever suggested a doubt of its correctness. The case to which I allude is as follows:

The suit was brought by the commonwealth of Pennsylvania. "The defendant had been clerk of the Senate, and in that character received nine hundred dollars as a fund to defray the contingent expenses of the house during several sessions. The committee of accounts called upon him for a settlement, but he declined exhibiting his vouchers unless they would allow him a certain retrospective compensation, to which he contended that he was entitled under an act passed on the 22d of April, 1794. The senate thereupon directed the comptroller to institute the present suit. Upon the trial, the defendant proved that he had expended considerably more money than he had received for the use of the house, and he claimed a verdict for the amount of his advances as well as for the additional compensation allowed by the act of 1794.

"But, after argument, the court declared that the defendant could not indirectly recover from the State a substantive, independent claim, by way of set-off, any more than he could directly recover a debt due from the State by bringing a suit against her. That the present action was brought to compel an account for money received for the use of the senate, in which the defendant, if he proved that the money received was so applied, would be entitled to a verdict; but that, even then, he could not be entitled to a verdict for the amount of his advances, which the senate alone was competent to allow. Verdict generally for the defendant."—(Commonwealth *vs.* Matlack, 4 Dallas, 303.)

That case, which was decided in Pennsylvania, where the act of 1705, relied on by the claimant, was in force, shows that though a suit by a State may be defeated by matters of set-off, yet no matter how large the defendant's claims may be, he cannot have a verdict against the State for any sum whatever, because no suit will lie against the State. So, where the suit is by the United States in a circuit court of the United States, though the defendant's set-off may exceed the demand against him, he cannot have a verdict for the excess, because the United States cannot be sued in such court.

This claim of Mrs. Reeside has been frequently before Congress, as stated in the petition. There is a report on it from the Judiciary Committee of the House of Representatives, in 1844, by Mr. Wilkins,

which, it appears to me presents the subject in its true light. That report, after some prefatory matter, proceeds as follows:

"Out of these proceedings, or (to come more directly and closely to the point) upon the *certificate* of the jury, which they returned with their verdict, rest the claim and suggestion of the memorialist 'that the United States are bound in justice and good faith, to provide for the payment of the debt so found by the said jury to be due by the United States to her late husband, James Reeside.'

"This claim of the petitioner assumes the proposition, that the 'certificate' of the jury is binding upon the United States 'as a debt of record,' and imposes the duty upon them to provide for the payment of the large sum certified to be due to the defendant.

"Your committee cannot assent to this proposition. They have, upon due consideration of the question, come to the conclusion that the verdict, in action by the United States for the recovery of a debt, should be a general one, either for or against the plaintiffs; and that the return of the verdict, and the judgment upon it, in the present instance, is a bar to any future claim by the government against the estate of James Reeside. But that when the jury went further than a general finding for the defendant, and returned a 'certificate' of a balance being due to him by the government, it was extraneous, and unauthorized by any law known to your committee. It can be considered in no other light than as the private opinion or conclusion of twelve men, as to the balance of complicated and confused accounts; but affords no *judicial evidence* that it is 'a debt of record.' The court, after overruling the motion for a new trial, simply rendered a general judgment on the verdict for the defendant, excluding and forbearing to recognize the certificate as a part of that verdict. The 'certificate' is entered by the clerk of the court upon the record of the proceedings in the cause, but is not noticed in the rendition of the judgment by the court.

"In her petition, the memorialist makes a reference to, and quotes the words of, a provincial law of Pennsylvania; and trusts to that law to sustain and bear her out in the suggestion that the sum 'certified' by the jury is '*a debt* of record,' due to her as the representative of the defendant, and for the payment of which the government should make provision.

"The first section of that provincial law of Pennsylvania, passed in 1705, called the '*defalcation act*,' and upon which the memorialist relies, provides that 'if it appears to the jury that the plaintiff is overpaid, then they shall give in their verdict for the defendant, and withal certify to the court how much they find the plaintiff to be indebted, or in arrear to the defendant more than will answer the debt or sum demanded, and the sum or sums so certified shall be recorded with the verdict, and shall be deemed as a debt of record; and if the plaintiff refuse to pay the same, the defendant, for recovery thereof, shall have a *scire facias* against the plaintiff in the said action, and have execution for the same, with the costs of that action.'

"The provisions of this act of assembly, like other laws of the State, are to be 'regarded as rules of decision in trials at common law in the courts of the United States, *in cases where they apply*.'—(1 Stat. at Large, 92.) But, unfortunately for the position assumed by the me-

morialist, this act of Pennsylvania does not happen to apply to cases wherein the United States are plaintiffs, brought against individuals for the recovery of money; nor does it apply to a suit brought against an individual by the commonwealth of Pennsylvania; it only applies to cases between *individuals* who have mutual and current accounts, and authorizes the jury, upon the principle of defalcation, to adjust the accounts, and to strike and certify a balance (if such should be the truth of the case) in favor of the defendant; and 'the sum so certified shall be recorded with the verdict, and shall be deemed as a debt of record.' The defendant has then the right to become the active party, a *quasi* plaintiff in the case; and can sue out a *scire facias* against the plaintiff, obtain judgment, and have execution for the recovery of the sum certified by the jury to be due to him.

"Now, if this Pennsylvania defalcation act of 1705 applied to actions brought against individuals by the government, it would prostrate the rule and the policy which declare that an action cannot be sustained against the United States. Because, if the law applies at all, and authorizes the jury to return a certificate, as in the present instance, and which can be recognized by the court, you must carrry its provisions into effect throught, and order 'the sum so certified to be recorded with the verdict, and be deemed as a debt of record.' Then the United States would become defendants in a scire facias sued out against them, and rendered liable to a judgment and an execution! If the act applies at all, it must apply and be effectual throughout. If it authorizes the 'certificate' and gives it the force of 'a debt of record,' it also authorizes the scire facias, the judgment, and the execution. This would be advancing a doctrine, and proceeding to a length, not to be thought for a moment by any one who looks at the phraseology of the law, or reflects upon its spirit and meaning, in connexion with the wise and settled policy of the general government. The certificate, therefore, of the jury was extraneous, and unauthorized by the act of Pennsylvania in a cause wherein the United States were plaintiffs.

"This early 'defalcation law' of Pennsylvania introduced a novel mode of proceeding in an action for the recovery of a debt where there had been mutual dealings between individuals, and the defendant may have overpaid the plaintiff. By the common law, in such a controversy, the jury could have no authority to return a verdict and find a sum of money to be *recovered* by the defendant from the plaintiff. This novelty in judicial proceedings has never been carried further than the cases occurring between *individuals*. This position is established by reference to a decision made by the supreme court of Pennsylvania, at the September term, 1804, in the case of the Commonwealth *vs.* Mattack. [The substance of that case is here stated. A copy of the report of it has been already given.]

"The very learned and able judge who presided at the trial of the cause, (United States *vs.* Reeside,) sustains the position here taken by the committee, in the conclusion of his written opinion overruling the motion for a new trial. He remarks: 'If the verdict be affirmed, it will only be operative, in law, as a judgment for the defendant to preclude the United States from afterwards claiming a balance; but the court can take no further steps to enforce the payment of the balance found due by them, as they could do in a similar case between indi-

viduals. The defendant must appeal to another tribunal for ultimate redress, where the whole merits of his claim may be re-examined. Whether it will or ought to be done, does not comport with my duty to say; but, inasmuch as Congress may act on this subject, according to their own discretion, it is evident the time may be very distant when this controversy may be terminated.'

"The 4th section of the act of Congress, approved March 3, 1797, gives to all defendants in suits brought by the United States a right to claim, against the demand for which the action has been brought, any credits to which they shall prove themselves entitled, if they have been presented to, and rejected by, the proper accounting officers of the Treasury Department.

"This provision, however, has no other object than to secure to the defendant, under the pleas of payment and set-off, the admission in evidence of his credits to the jury in support of the issue, and to establish his right to a general verdict in his favor; but does not authorize the jury to go further, and declare the defendant to be a creditor of the government, and so to ascertain and 'certify' the balance that, in law, it shall be binding, '*and shall be deemed a debt of record.*'

"The United States may happen, in many cases, to be the debtor to the defendant, upon the final adjustment of complicated accounts; but it will require the enactment of a law of Congress to give authority to a jury to place the government in that predicament, and by their verdict, or by any declaration of opinion accompanying their verdict, to afford evidence of the amount of the debt, so that it can receive the sanction of a juduicial judgment, and be established as an incontrovertible or final '*debt of record.*'

"Your committee have not been furnished with any account by the memorialist, nor with any statement of the grounds or facts assumed by the jury, from which they drew the conclusion that the government was indebted to her late husband in the large amount mentioned in the certificate which was returned with their verdict. The memorialist appears to rely for the validity and payment of her claim, entirely upon the alleged legal effect of that certificate. But, inasmuch as the committee view the certificate of the jury as extraneous and unauthorized by any law, it affords no evidence of a debt of record against the United States; and as the judgment rendered on the verdict merely bars the government from any further demand upon the estate of James Reeside, the claim of the memorialist remains open to be re-examined and adjusted, either by the proper department of the government, or by an appropriate committee of the House of Representatives.

"Your committee, therefore, without intimating an opinion upon the merits of the claim, or upon the confused accounts out of which it arises, and avoiding any allusion to the supposed moral influence of the certificate of the jury, ask to be discharged from the further consideration of the subject."

I have referred to that able report for the sake of the argument it contains. I consider the aforesaid certificate of the jury to have been given, as before said, without any authority of law, and to be of no validity in a court of justice. In the case of Reeside *vs.* Walker, before cited, the Supreme Court of the United States decide that said

certificate and judgment did not authorize the issuing of a mandamus to compel the Secretary of the Treasury to pay the amount certified; and they also decide that the proceedings did not even authorize the issuing of a scire facias against the government under the statute of Pennsylvania of 1705. The reasons, among others, given by the court are, that the judgment amounted to no more than that the defendant should go without day; and that no recovery for any sum could be had against the United States.—(11 Howard, 288 to 290.)

A great effort was made, by one of the claimant's counsel, to show that the United States might be sued in the circuit court; and that, therefore, the jury had authority to return said certificate. But that effort entirely failed. The Supreme Court of the United States, in said case relative to a mandamus, use the following language:

"It is well settled, too, that no action of any kind can be sustained against the government itself, for any supposed debt, unless by its own consent, under some special statute allowing it, which is not pretended to exist here.—(Briscoe *vs.* Kentucky Bank, 11 Peters, 321; 4 Howard, 288; 9 Howard 389.)

"The sovereignty of the government not only protects it against suits directly, but against judgments even for cost, when it fails in prosecutions.—(4 Howard, 288.)

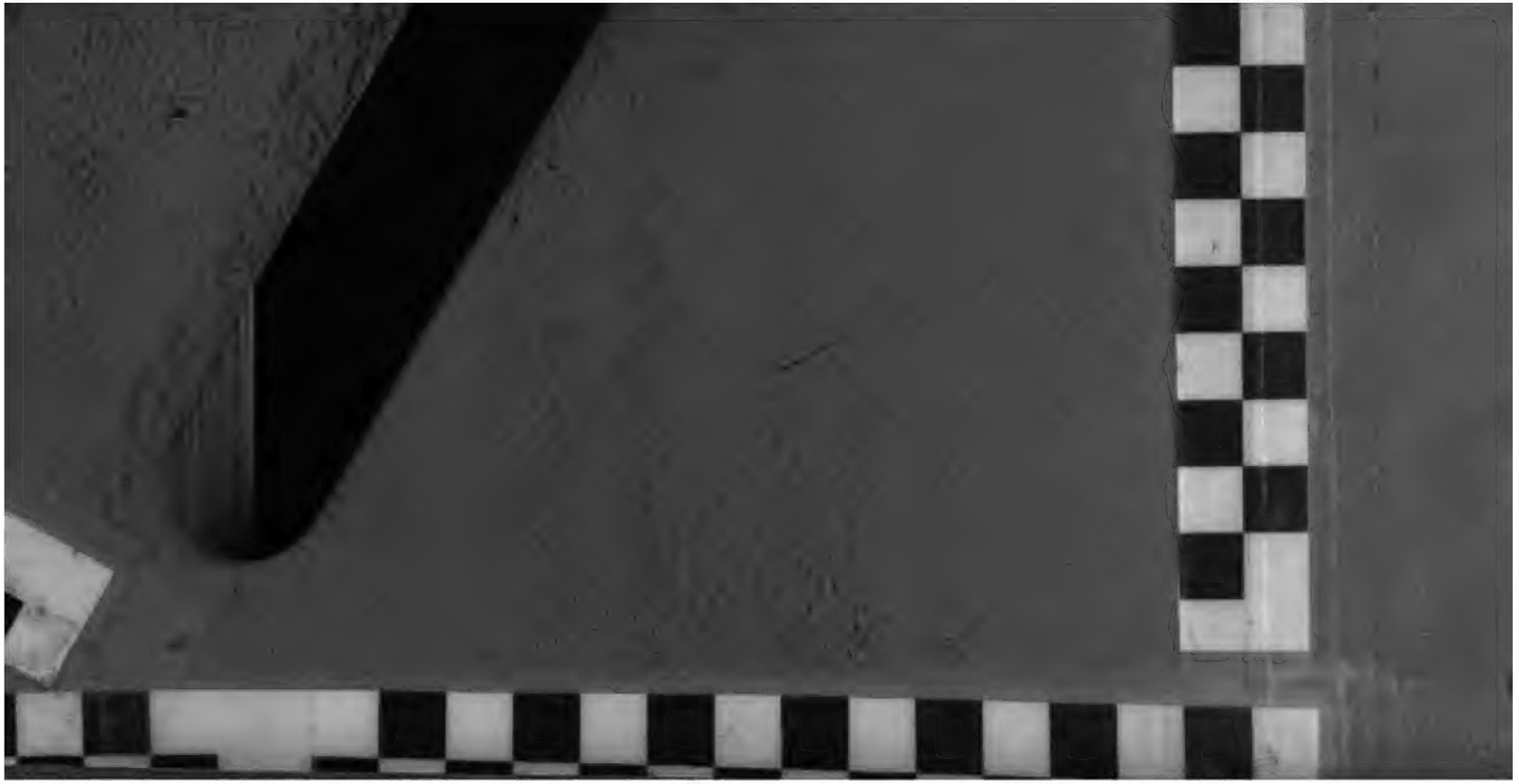
"Such being the settled principle in our system of jurisprudence, it would be derogatory to the courts to allow the principle to be evaded or circumvented.

"They could not, therefore, permit the claim to be enforced circuitously by mandamus against the Secretary of the Treasury, when it could not be directly against the United States; and when no judgment on and for it had been obtained against the United States.

"As little also would be the propriety of allowing by scire facias, or otherwise, a judgment to be entered against the United States on a set-off, when it could not have been allowed in an action against them on the subject-matter of the set-off.

"To permit a demand in set-off against the government to be proceeded on to judgment against it, would be equivalent to the permission of a suit to be prosecuted against it. And however this may be tolerated between individuals, by a species of reconvention, when demands in set-off are sought to be recovered, it could not be as against the government except by a mere evasion, and must be as useless in the end as it would be derogatory to judicial fairness. A set-off or reconvention is often to be treated as a new suit by the defendant, and the pleadings and judgment are to be made to correspond.—(See Louisiana Code of Practice, 374. §§ 371, 377.") Reeside *vs.* Walker, 11 Howard, 290.

That is a decision in point by the Supreme Court of the United States, that in a suit brought by the United States, and a set-off pleaded, there can be no judgment for any amount whatever against the United States. And the above opinion of the Supreme Court was delivered in reference to the very proceedings which are now relied on by the claimant. I consider that decision to be, of itself, a perfect answer to the present claim.

Believing, as I do, that the certificate in question is of no validity in this or any other court, for the want of authority in the jury to make it, I dissent from the judgment in favor of the claimant which has just been delivered.

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